ISSUES INVOLVED IN SEATING A SENATOR

NOVEMBER 1927

Issues Involved in Seating a Senator

Provisions of U. S. Constitution

Federal Laws and Senate Rules

Procedure for Electing and Seating a Senator

Review of Senate Election Disputes

Action on Pending Smith and Vare Cases

Pro and Con Arguments
by U. S. Senators and Constitutional Lawyers

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The Congressional Digest

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Special Feature This Month:

Issues Involved in Seating a Senator

What the United States Constitution Provides

Qualifications and Election of Senators—Authority of Senate Over Membership

Note.—This number deals only with the United States Senate. The House of Representatives has its own manual of rules, deriving from Article 1, Sections 4, 5 and 6, of the United States Constitution, authority over its members equivalent to the Senate's authority over its members. The differences between the membership of the two branches as to qualifications, term of service, and method of election before the 17th Amendment are also specified in the Constitution.

ART. I, Sec. 1, Par. 1—All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Art. I, Sec. 2, Par. 1—The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Art. I, Sec. 3, Par. 4—The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

Par. 5—The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the Office of President of the United States.

Procedure of Election Prior to Amendment XVII

Art. I, Sec. 3, Par. 1—The Senate of the United States shall be composed of two Senators from each state, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Par. 2—Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the Second Year, of the second Class at the Expiration of the fourth Year, of the third class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointment until the next Meeting of the Legislature, which shall then fill such Vacancies.

*Amendment XVII**

Amendment XVII—The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies. Provided, That the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

Qualifications of Senators

Art. I, Sec. 3, Par. 3—No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not when elected be an Inhabitant of that State for which he shall be chosen.

Amendment XIV, Sec. 3, Par. 3—No Person shall be a senator or representative in Congress, or elector of President and vice-president, or hold any office, civil or military, under the United States or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial Officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Authority Over Elections and Members

Art. I, Sec. 4, Par. 1—The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be

*Proposed by Congress May 13, 1912, when it passed the House having previously passed the Senate on June 12, 1911. Wisconsin ratified on May 9, 1912—the thirty-sixth State. On May 31, 1913, it was certified by the Secretary of State and became part of the Constitution.

prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to Places of Chusing Senators.

Art. I, Sec. 5, Par. 1—Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such manner, and under such Penalties as each House may provide.

Par. 2—Each House may determine the rules of its Proceedings, punish its members for disorderly behavior, and with the Concurrence of two thirds, expel a Member.

Privileges and Restrictions

Art. I, Sec. 6, Par. 1—The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases; except Treason, Felony and Breach of the Peace, be privileged from arrest during their Attendance at the session of their respective House, and in going to and returning from the Same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Par. 2—No Senator or Representative shall during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his Continuance in Office.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the State respectively, or to the people.

Federal Laws Governing Election of Senators

Procedure

July 25, 1866, Congress first exercised its Constitutional power to make or alter regulations as to the time and manner of choosing Senators. Previously, each State by constitution or by law had regulated its election of Senators; in some, the House voted, sitting separately; in others, in joint session. The Act provided, in part, as follows:

"The legislature of each State which is chosen next preceding the expiration of the time for which any Senator was elected to represent such State in Congress shall, on the second Tuesday after the meeting, proceed to elect a Senator in Congress.

"Each house shall openly, by a viva voce vote of each member present, name one person for Senator in Congress from such State, and the name of the person so voted for, who receives a majority of the whole number of votes cast in each house, shall be entered on the journal of that house by the clerk or secretary thereof; or if either house fails to give such majority to any person on that day, the fact shall be entered on the journal. At twelve o'clock meridian of the day following that on which proceedings are required to take place, the members of the two houses shall convene in joint assembly, and the journal of each house be read, and if the same person has received a majority of all the votes in each house, he shall be declared duly elected Senator.

"If no person receives such majority on the first day the joint assembly shall meet at 12 o'clock of each succeeding day during the session of the legislature and shall take at least one vote, until a Senator is elected.

"Whenever on the meeting of the legislature of any State a vacancy exists in the representation of that State in the Senate, the legislature shall proceed, on the second Tuesday after meeting and organization, to elect a person to fill the vacancy.

"It shall be the duty of the executive of the State from which any Senator has been chosen to certify his election, under the seal of the State, to the President of the Senate of the United States."

May 31, 1913, the 17th Amendment was proclaimed in force, providing for direct election of Senators by popular vote. *See p. 291.*

Corrupt Practices

January 16, 1883, Congress passed the Civil Service Act, prohibiting the assessment of campaign funds among employes in Federal buildings.

January 25, 1907, an Act of Congress was approved making it unlawful for any national bank or any corporation organized by authority of any laws of Congress to make money contributions in connection with any election to any political office.

March 3, 1909, an Act was approved providing that no Senator or Representative should solicit or receive contributions for a political purpose.

June 25, 1910, an Act of Congress was approved providing for publicity of contributions made for the purpose of influencing elections at which representatives in Congress were elected.

August 19, 1911, and *August 23, 1912,* Congress amended the Act of 1910, to provide as follows:

Every person who shall be a candidate for nomination at any primary election or nominating convention, or for indorsement at any general or special election, or election by the legislature of the State, as Senator in the Congress of the United States, shall, not less than ten nor more than fifteen days before the day for holding such primary election or nominating convention, and not less than ten nor more than fifteen days before the day upon which the first vote is to be taken in the two houses of the legislature before which he is a candidate for election as Senator, file with the Secretary of the Senate at Washington, District of Columbia, a full, correct and itemized statement of all moneys and things of value received by him in support of his candidacy, with the names of all those who furnished the same.

Every candidate shall, within fifteen days after primary election or nominating convention, and within thirty days after the general or special election, and within thirty days after the day upon which the legislature shall have elected a Senator, file with the Clerk of the House of Representatives or with the Secretary of the Senate, as the case may be, a full, correct and itemized statement of all moneys and things of value received by him or by anyone for him with his knowledge and consent, from any source, in aid or support of his candidacy

No candidate for Representative in Congress or for Senator of the United States shall promise any office or position

to any person, or to use his influence or to give his support to any person for any office or position for the purpose of procuring the support of such person, or of any person, in his candidacy.

That every person willfully violating any of the foregoing provisions of this Act, shall, upon conviction, be fined not more than one thousand dollars or imprisoned not more than one year, or both.

October 16, 1918, an Act was approved, providing a fine of $1000 or imprisonment for one year or both for the person who should promise, offer or give anything of value or make a contract for delivery of money "to any person either to vote or withhold his vote or to vote for or against any candidate or should solicit or accept any money for his vote for Senator or Representative or delegate in Congress."

May 2, 1921, the Newberry case was decided, declaring unconstitutional and void the Acts of 1910, of 1911 and of 1912. In 1918, Truman H. Newberry was elected Senator from Michigan. Taken with the State "Corrupt Practices" enactment, the Federal statute prohibited expenditure by Newberry of more than $3750. Indicted and convicted in the Federal District Court, Newberry appealed to the Supreme Court. The opinions in this case (256 U. S. 232) show that four of the justices held that Congress has no power to control the party primaries. Justice McKenna believed the Act of 1911 was unconstitutional since it was passed before the Seventeenth Amendment. The four remaining justices dissented on the ground that the nomination is a part of the election.

February 28, 1925, an Act of Congress was approved providing for publicity of campaign contributions and expenditures through public report of political committees, for limitation of expenditures by candidates, for prohibition of campaign contributions by corporations or of use of Federal patronage. "Election" as defined in the Act does not include a primary election or a convention of a political party.

Salaries of Senators

February 10, 1923. A Joint Resolution was approved, providing that "salaries of Senators appointed to fill vacancies in the Senate shall commence on the day of their appointment and continue until their successors are elected and qualified, and salaries of Senators elected to fill vacancies in the Senate shall commence on the day they qualify." Another provision in regard to salaries of Senators (22 Stat. 632) is incorporated in the standing orders, as follows: "That Senators elected whose term of office begins on the fourth day of March, and whose credentials in due form of law shall have been presented in the Senate, but who have had no opportunity to be qualified, may receive their compensation monthly, from the beginning of their term until there shall be a session of the Senate."

Legislation in the States

Most of the States have since 1913 passed "corrupt practices" laws. Illinois has no law limiting expenditures or providing for reports; the laws of Kansas, Kentucky and Minnesota apply only to State officers; and in Georgia, New York, Pennsylvania, Vermont and Washington laws require reports, but impose no limitation on amounts. Other States limit expenditures. (See Congressional Digest, October, 1926.)

The Rules of the Senate

THE first action of the Congress in 1789 was the formulation and adoption of rules of procedure by each house. Unlike those of the House, the Senate rules do not need to be readopted at the beginning of each Congress since the Senate is a continuous body. On April 7, 1789, the new Senate appointed a committee to draw up a set of rules for the conduct and procedure of the Senate. On April 13, 1789, the Senate adopted the report of the committee. On March 26, 1806, these rules were first revised and readopted. On January 21, 1884, the rules which are now used in the Senate became effective. About 45 amendments have been made from time to time since that date.

Rules may be adopted or amended by majority vote, but a two-thirds vote is required for the suspension of a rule. Rule XL provides:

"No motion to suspend, modify or amend any rule, or any part thereof, shall be in order, except on one day's notice in writing, specifying precisely the rule or part proposed to be suspended or amended, and the purpose thereof. Any rule may be suspended without notice by unanimous consent of the Senate, except as otherwise provided in Clause 1, Rule XII."*

The following rule is directly applicable to election cases, but almost any rule may be invoked under certain circumstances in the Senate.

RULE VI

Presentation of Credentials

1. The presentation of the credentials of Senators-elect and other questions of privilege shall always be in order, except during the reading and correction of the Journal, while a question of order or a motion to adjourn is pending, or while the Senate is dividing; and all questions and motions arising or made upon the presentation of such credentials shall be proceeded with until disposed of.

2. The Secretary shall keep a record of the certificates of election of Senators by entering in a well-bound book kept for that purpose the date of the election, the name of the person elected and the vote given at the election, the date of the certificate, the name of the Governor and the Secretary of State signing and countersigning the same, and the State from which such Senator is elected.

Procedure for Electing and Seating a Senator

PRIOR to the adoption of the Seventeenth Amendment to the U. S. Constitution Senators were elected by State legislatures on joint ballot of the two branches. Various methods of placing candidates in nomination prevailed. In the earlier days, upon the meeting of the legislature in joint session to elect a Senator, nominations were made by friends of the candidates and frequently a large number of candidates were placed in nomination. Balloting would continue until one candidate received a majority vote. This led to frequent deadlocks lasting for weeks or months.

Later, in most States, the political parties would hold caucuses of their members in the legislatures and agree beforehand upon the party nominee, each party presenting a single name at the joint session. Still later nominations were

*Rule XII provides for the time and procedure of voting on motions, etc., and can never be suspended.

made at State party conventions at which delegates not members of the legislatures had a voice in the choice of the party's candidate. In these instances the members of the party holding seats in the legislature would be instructed to vote for the party choice.

With the development of the primary system of selecting nominees laws were passed in a number of States providing for popular choice of Senatorial candidates, expressed at the polls. These preferences were not legally binding upon members of the legislatures when they met to elect a Senator, but were almost invariably followed. By 1912 popular expressions of a choice for Senatorial candidates prevailed in 29 States. In 1912 the resolution for the Seventeenth Amendment* was adopted by both branches of Congress and in 1913 the amendment was ratfied by the requisite two-thirds of the States and declared in force.

With the general spread of the direct primary system† of selecting party candidates for nearly all public offices the names of candidates for the Senate were placed on the primary ballots, thus giving the entire membership of the party in the State an opportunity to express their choice of a Senatorial candidate. The name of the candidate of the party thus chosen would then go on the regular ticket of his party as the party candidate.

There is nothing in the Constitution, however, to prevent a man from running for the Senate in a general election whether he has been nominated by a party or not. It frequently occurs that there are independent candidates in the field. State laws as to the formalities to be gone through with before a candidate's name ma ygo on the ballot vary, but in most instances anyone can have his name printed on the ballot by giving the required notice within a given time before election day.

After the ballots are cast and the vote is counted and certified by the proper State authorities, the successful candidate obtains his credentials from the authority of his State empowered by the State law to sign the certificate of election. In most States the Governor signs the certificate of election. In some States the signatures of both the Governor and the Secretary of State are required. A few States have election boards, whose members must signt the certificate.

The credentials are sent to the Vice-President, who may present them to the Senate. Usually, however, the other Senator from the same State presents the credentials. They are then referred to the Committee on Privileges and Elections, which reports on the correctness of their form. The Senator-elect appears in the Senate on the day on which his term of office begins, or as soon thereafter as the Senate meets, to take the oath of office. According to the usual custom he is escorted to the Vice-President's desk or rostrum in the Senate by his colleague, the other Senator from his State, who stands with him while he takes the oath. The oath is administered by the presiding officer of the Senate in the presence of the Senate, in open session.

The Senator is then assigned a desk in the Senate. If he is a Republican he sits on the east side of the main aisle and if a Democrat on the west side. The choice of seats in the Senate goes by seniority and the oldest members in point of service of each of the principal parties usually select the seats on or near the main aisle. During the past session (Sixty-ninth Congress, Second Session), there was but one Senator not a member of the Republican or the Democratic party—a member of the Farmer Labor party. His seat wa on the Republican side.

Procedure For Filling a Vacancy

In order that a State may not be deprived for any appreciable length of time of its representation in the Senate, the Seventeenth Amendment authorized the executive authority of the State to issue writs of election to fill a vacancy, granting to the legislature of the State the right to empower the Governor to make temporary appointment. Most of the States have passed such laws. In some States the appointee of the Governor may serve only until a special election is held, provision being made for the prompt calling of the special election. In all States the term of a Senator appointed to fill a vacancy extends only until such a time as his successor chosen at the next popular election is duly qualified. The regular procedure is followed in the seating of an appointed Senator, who is referred to as the Senator-designate rather than the Senator-elect until he takes the oath.

Explanatory Notes on Terms Used in Election Cases

Committee on Privileges and Elections.—This committee was first appointed on March 10, 1871, 42d Congress, first session. Prior to that date credentials were referred in some cases to a special committee on elections, but most frequently to the Committee on the Judiciary.

Contested Elections.—Not infrequently an apparently defeated candidate alleges that he has been illegally denied a certificate of election and so serves notice, challenging the result. He may allege errors in the count, illegalities in the polling places, fraud, corruption or some other election defect sufficient to call a review of all the votes cast for his office. The procedure in the Senate includes filing a petition by the defeated candidate, which is usually referred to the Committee on Privileges and Elections, stating definitely the allegations why the person declared elected is not duly elected. In England a contested election is a term applied to any election in which there are two or more candidates for the same office.

Corrupt Practices Acts.—Laws defining and fixing penalties in order to secure purity in elections. Most of the States have laws forbidding the purchase of votes, treating, betting, payment of naturalization fees or taxes by other persons, and the solicitation from candidates of contributions for charitable, religious or other purposes. In some States the publication of political advertisements is regulated. In order to eliminate as far as possible the undue influence of persons financially interested in the results of an election, the laws require the detailed publication of the sources of campaign funds, and prohibit contributions from corporations and from office holders. Often the expenditures of candidates are limited to a fixed sum or to a certain proportion of the total salary; and detailed reports of all expenditures are required to be filed after the primary, at some definite date prior to the election, or after the election. The present Federal Corrupt Practices Act, dealing with expenditures in elections, was approved February 28, 1925. Illinois has no "corrupt

*See p. 291 for text of XVII Amendment.
†See Congressional Digest, October, 1926.

practices" legislation, and the law of Pennsylvania does not limit campaign expenditures.

Credentials.—A Senator-elect must have a certificate of election from the Governor of the State in which he is elected, this ordinarily being attested by the Secretary of State. On August 20, 1914, the Senate adopted a resolution suggesting "convenient and sufficient forms of certificate of election of a Senator or the appointment of a Senator, to be signed by the executive of any State in pursuance of the Constitution and the statutes of the United States." A writ or certificate of election, although not an incontestable claim, is considered prima facie evidence. (See Presentation of Credentials, Rule VI of Senate.)

Daugherty case.—As referred to in this number, the case of J. J. McGrain, deputy sergeant-at-arms of the Senate, vs. Mally S. Daugherty, decided by the United States Supreme Court, January 17, 1927. Daugherty had failed to testify before a Senate investigating committee, but the Court declared that the Senate had power to compel testimony, and that the committee designated possessed the authority to continue after the adjournment of the 68th Congress. (71 Law Ed. 371.)

Electors in any election.—All persons qualified to vote, whether or not they exercise the privilege, are electors. (Bouvier.)

Impounding ballots.—Taking the election ballots under order of the Court and concentrating them in sealed rooms.

Jefferson's Manual.—The Federal and State constitutions provide that each house of Congress and of the several State legislatures shall determine the rules of its proceedings. These rules, however, are subject to limitations imposed by the several constitutions, and to interpretation by the presiding officers. The Manual, which Jefferson prepared when he became Vice-President, was at once accepted as the standard digest of parliamentary law in the United States. It has always remained a reliance of presiding officers in the United States Senate, and has long served as a model for guidance of legislative bodies in the States. It was formally adopted by the Federal House of Representatives in 1837, but has never been closely followed by the House and is now in large part superseded. It has never been officially incorporated in the Senate rules and has been to great extent replaced by the Senate precedents.

Newberry case.—In Newberry vs. the United States (256 U. S. 243) the Supreme Court held the Federal Corrupt Practices Act of 1910 as amended in 1911 and in 1912 unconstitutional in so far as it attempted to regulate the nomination of Senatorial candidates; declaring that the constitutional term "elections" did not include the primaries. The opinion of the Court given by Justice McReynolds stated that as each House should be the judge of the elections, returns and qualifications of its own members, and as Congress might by law regulate the times, places and manner of holding elections, "the national Government is not without power to protect itself against corruption, fraud or other malign influences." (See discussion on page 262, Congressional Digest, October, 1926.)

Political assessments.—Political assessments are gathered by party committees from candidates and office holders; the practice is based on the principle that the candidates and office holders are indebted to the party for their election. Parties have laid down the rule that an office holder is expected to pay a certain percentage of his salary every year, or every campaign year.

Presentation of credentials.—It is a custom for the senior Senator of any State to present the credentials of the newly elected Senator from that State, or in case of re-election of the senior Senator, for the junior Senator to present the credentials. These credentials are usually presented very soon after the election returns have been finally passed upon and before the adjournment of the Congress which precedes the term during which the Senator-elect is to serve.

Privileged Resolution or Motion.—A resolution or motion dealing with subject matter defined in the Senate Rules as privileged and which, when offered in the Senate, may receive immediate consideration. All Senate resolutions not privileged must, under the rules, lie over a day before receiving consideration.

Qualifications of Senators.—The Constitution provides that a Senator must be 30 years of age, nine years a citizen of the United States, and when elected, an inhabitant of the State from which he is chosen. In the Constitutional Convention the age limit was adopted without debate. Different property and financial qualifications were suggested, but the convention did not seem able to agree upon any of them, and they were finally dropped. It was first proposed that a Senator should be a citizen of the United States. The period of four years was proposed, then that of fourteen, then that of ten. Finally nine was the term agreed upon. The States do not have a right to add to the constitutional qualifications of Senators. It is a much-discussed question whether the Senate itself possesses authority to impose additional qualifications for admission.

Returns of elections.—Statements drawn and certified by election officials of votes cast in each precinct for each candidate.

Rules of Senate.—See article on Senate Rules, page 293.

Select or special committee.—A committee to which is assigned a particular and more or less temporary task, usually of inquiry, deriving its powers entirely from the resolution authorizing it, and not having the status of a standing committee.

Senator-designate.—A person who has been appointed to fill a vacancy in the Senate but who has not yet taken the oath of office, or has not been declared entitled to his seat by the Senate.

Senators-elect.—Candidates who have received the highest votes for seats in the Senate, as certified by the executives of the various States, but who have not been declared duly qualified for the offices by the Senate. Their credentials may or may not have been presented.

Slush fund.—Sums of money used in a political campaign, which are raised or spent dishonestly to influence voters.

Standing committees.—Those committees which are specifically designated in the Senate rules to be appointed at the commencement of each Congress. By Rule XXV as amended and adopted on April 18, 1921, it is provided that all standing committees shall continue and have the power to act until their successors are appointed.

Standing orders of the Senate.—A section of the Senate manual is devoted to "standing orders, not embraced in the rules, and resolutions and such parts of laws as affect the business of the Senate." The rules relate entirely to a continuous procedure, which the Senate has full power of making and amending, but the orders have the sanction of rules.

A Review of Senate Election Cases of the Past

Cases Where Oath Was Administered and Credentials Referred to Committee

Stanley Griswold, Ohio, 1809. A committee on elections reported that Griswold was entitled to his seat, since the Governor had certified his appointment, his brief residence in the State notwithstanding. Griswold was not removed.

Ephraim Bateman, New Jersey, 1827. A memorial of protest from citizens of New Jersey was considered by the committee, but Bateman was not removed.

Elisha Potter vs. Asher Robbins, Rhode Island, 1833. Potter's credentials were presented following those of Robbins. After debate, Robbins was admitted to take oath. The credentials of both men were referred to a select committee. The question was which legislature of Rhode Island should be recognized. The resolution declaring Robbins elected passed, 27 to 16.

Stephen R. Mallory, Florida, 1851. He took the oath, but a letter contesting the seat on the ground that he did not receive a majority of votes was referred to a select committee, which reported Mallory duly elected. The Senate unanimously agreed.

Lyman Trumbull, Illinois, 1855. Objection was that he had been a State Judge less than a year previous to his election, which, under the Illinois statute, was a disqualification. He was declared entitled to his seat.

James Harlan, Iowa, 1855. Objection was that in the joint session of the legislature electing, a majority of the State Senate was not present. The Senate adopted the recommendation of the committee that the seat be declared vacant.

Graham N. Fitch and Jesse D. Bright, Indiana, 1857. Objection was that they were not elected by the legislature of Indiana, but "by a convocation of a portion of the members thereof, not authorized by any law of the State by resolution adopted by the legislature or by any provision of the Constitution of the United States." They were declared "entitled to their seats" June 12, 1858.

Simon Cameron, Pennsylvania, 1857. Objections were: (a) Irregularity of elections; (b) bribery and procurement of election by corrupt and unlawful means. Cameron resigned.

Waitman T. Willey and John S. Carlile, Virginia, 1861. Objection because Virginia was in a state of rebellion. After debate the motion made to refer credentials to the committee was lost and the oath of office was administered.

John P. Stockton, New Jersey, 1865. Objection was that the convention which elected him had by resolution prescribed a plurality rule and that he had not received a majority vote. The Senate resolved, 23 to 20, that Stockton was not entitled to his seat.

Alexander McDonald and Benjamin F. Rice, Arkansas, 1868. Contested by John T. Jones and Augustus H. Garland on the ground that contestants had been elected Senators in the year 1866 and had presented their credentials and the credentials had been ordered by the Senate to lie on the table. McDonald and Rice were seated.

Thomas W. Osborn, Florida, 1868. Objection was that State of Florida had not ratified the Fourteenth Amendment. The credentials were not referred to committee and Osborne was seated.

H. R. Revels, Mississippi, 1870. Objection that Mr. Revels was partly of African blood and, therefore, had not been a citizen of the United States for nine years preceding his election. Resolution to refer to a committee was lost, and Revels took the oath on February 25, 1870.

George E. Spencer, Alabama, 1873. Two legislatures had elected Senators: One, George E. Spencer; the other, Francis W. Sykes. Spencer was permitted to take the oath.

L. Q. C. Lamar, Mississippi, 1877. Objction was that the State government was a usurpation. An inquiry into alleged election fraud had been made by a select committee and reported on August 7, 1876. "Most Senators proceeded upon the ground that Mr. Lamar had at least a prima facie title to the seat and should be sworn." He took the oath March 6.

John T. Morgan, Alabama, 1877. Objection was that the State legislature had been fraudulently elected. Mr. Morgan was sworn in March 8, 1877.

La Fayette Grover, Oregon, 1877. Objection made on grounds of bribery and corruption. Grover was not removed.

John J. Ingalls, Kansas, 1879. Contest on charge of bribery. The report exonerated Mr. Ingalls.

Elbridge G. Lapham and Warner Miller, New York, 1881. Charges of irregular election and bribery. The committee report was laid on the table.

David Turpie, Indiana, 1887-88. Objection was made that the legislature was improperly organized and persons not lawful members of legislature acted as such. The Committee on Privileges and Elections reported that the facts required the U. S. Senate to consider the election by the Indiana Senate lawful and "the judgment of the Indiana Senate was conclusive on the Senate of the United States, and that the latter body could not inquire into the motive of the former." Turpie was not removed.

Charles J. Faulkner, West Virginia, 1887. In this case the legislature adjourned without electing a Senator. Mr. Lucas was shortly thereafter appointed Senator by the Governor. Later the Governor called a special session of the legislature, which then elected Senator Faulkner. Both sets of credentials were presented to Congress, but Faulkner was seated.

George L. Shoup, William T. McConnell and Fred T. Dubois, Idaho, 1890. There was filed a statement of the Governor of Idaho transmitting a certified copy of the proceedings of the joint convention of the legislature of that State in which three Senators were elected; one (Dubois) for the term beginning March 4, 1891, whose credentials were presented to the Senate and on the same day the credentials of Messrs. Shoup and McConnell as Senators were presented. Mr. Shoup, who was present, was sworn and took his seat. The credentials were on the same day referred to the Committee on Privileges and Elections, which reported that the credentials constituted sufficient certificate of the election and recommended that Mr. McConnell be also sworn and admitted to a seat.

Fred T. Dubois, Idaho, 1892. His seat was contested by William H. Claggett. Two legislatures had attempted to elect a Senator. The oath was administered to Dubois and the case referred to the Committee on Privileges and Elections. Dubois' right to a seat was confirmed.

Wilkinson Call, Florida, 1891-92. Charge was made that Call was elected illegally by the legislature. Mr. Call was allowed to take the oath. The credentials were then examined and he continued in office.

John Martin, Kansas, 1894-95. John Martin and Joseph W. Ady were elected by two different legislatures. Martin's title was sustained.

Richard R. Kenney and John E. Addicks, Delaware, 1897. Addicks claimed he was elected to the Senate and that Mr. Kenney was not the legally elected Senator. Kenney was seated. The credentials of Addicks were signed by the clerk of the Senate and the clerk of the House of Representatives of the Delaware legislature; those of Kenney by the Governor of the State.

Reed Smoot, Utah, 1903. Credentials were presented by his colleague, Senator Kearns. At the same time a contest was filed, raising the question of Senator Smoot's qualifications in view of his connection with the Mormon Church. On March 6, 1903, the oath of office was administered and his case referred to the Committee on Privileges and Elections, and thereafter his right to a seat was upheld.

John W. Smith, Maryland, 1908. Motion was made to refer his credentials to the Committee on Privileges and Elections, before the administration of the oath. This motion failed of adoption by a vote of 28 to 34. Senator Smith was sworn and took his seat.

William F. Kirby, Arkansas, 1916. The senior Senator from Missouri (Mr. Reed) moved to refer the credentials to the Committee on Privileges and Elections before the oath was administerd. That motion was lost by a vote of 32 to 44 and immediately Senator Kirby took the oath of office.

George H. Moses, New Hampshire, 1918. Senator Pomerene, chairman of the Committee on Privileges and Elections, moved that the credentials be referred to that committee before the administration of the oath of office. Senator Lodge's motion prevailed and Mr. Moses was sworn in.

Truman H. Newberry, Michigan, 1918. A petition of contest was filed in the Senate on January 6, 1919, and on January 7, 1919, referred to the Committee on Privileges and Elections. On March 1, 1919, his credentials were presented by Senator Smith. On May 19, 1919, the oath of office was administered. On the following day, May 20, 1919, another petition of contest was filed against him, which was referred to the Committee on Privileges and Elections, and thereafter, on December 3, 1919, a resolution was adopted by the Senate, ordering an investigation. On January 12, 1922, his right to his seat was sustained. (*See p. 295.*)

Earle B. Mayfield, Texas, 1922. January 17, 1923, his credentials were presented and placed on file. A contest was filed by George E. B. Peddy on February 22, 1923. The oath was administered to Mr. Mayfield on December 3, 1923. The petition of contest was referred to the Committee on Privileges and Elections and, after the committed reported, his right to his seat was sustained.

Thomas D. Schall, Minnesota, 1924. His credentials were presented and filed on December 8, 1924. Notice of protest was presented and filed with the Secretary of the Senate February 2, 1925. Senator Schall took the oath of office on March 4, 1925.

Arthur R. Gould, Maine, 1926. On December 6, 1926, after his credentials were presented and while he was awaiting the oath to be administered, Senator Walsh (Mont., D.,) presented a resolution in which were incorporated certain statements purporting to have been made by a judge in the province of New Brunswick in the Dominion of Canada, charging that bribery had been perpetrated. The resolution directed the Committee on Privileges and Elections to investigate the truth of the charges made. On objection the resolution went over one day and the oath was administered to Mr. Gould.—*Extracts, see 15, p. 322.*

Cases Where Credentials Were Referred Before Oath Was Administered

John M. Niles, Connecticut, 1844. For the term beginning March 4, 1843. The credentials presented April 30, 1844, were referred to a select committee. The report declared the charge of mental incompetency unfounded. The Senate voted to seat him.

William M. Fishback, Elisha Baxter and William D. Snow, Arkansas, 1864-65. The question involved was loyalty of the State and whether the legislature electing them was the representative of the people. The committee reported, but no action was taken.

R. King Cutler, Charles Smith and Michael Hahn, Louisiana, 1864. The loyalty of the State was questioned, and the claimants were not admitted to seats.

Joseph Segar and John Underwood, Virginia, 1865. A great part of the State was in rebellion. The question was the authority of a legislature so constituted. The credentials were not finally reported. Neither candidate was seated.

D. T. Patterson, Tennessee, 1866. The loyalty of the State was questioned, but proof of personal loyalty resulted in a Senate resolution to admit Patterson.

Philip F. Thomas, Maryland, 1867. The question was one of personal loyalty. He was excluded.

Richard H. Whiteley and Henry P. Farrow, Joshua Hill and H. V. M. Miller, Georgia, 1868-69. The question was whether the legislatures of Georgia were disqualified under the Fourteenth Amendment. Hill and Miller were seated.

Adelbert Ames, Mississippi, 1870. The question involved was inhabitancy. He was declared eligible and took the oath.

Abijah Gilbert, Florida, 1870. His seat was contested on the ground that the proceedings in the legislature were not in accordance with the statutes of the State, but Gilbert was seated, in accordance with the committee report.

Morgan C. Hamilton, Texas, 1871. Two Senators presented credentials for the same term. Both credentials were referred to the Committee on Privileges and Elections. Those of Hamilton were sustained, although it was charged that he was elected before the reconstruction of Texas was completed.

George Goldthwaite, Alabama, 1871. The charge was that some members of the legislature which elected him had been illegally elected. Goldthwaite was seated.

Thomas M. Norwood, Georgia, 1871. Contested by Foster Blodgett. Two legislatures had attempted to elect a Senator. Senator Norwood was seated.

Matt W. Ransom, North Carolina, 1871. Contested by Joseph C. Abbott. Zebulon B. Vance had received the highest vote, but was disqualified under the Fourteenth Amendment, and did not present his credentials. Abbott received second highest vote in the election. In the meantime Ransom was elected and seated.

The so-called Louisiana cases, 1873-1880, involved the question of whether there was a constitutional State government, and included the contests of Ray and McMillin. McMillin and Pinchback, Marr and Eustis, and Spofford and Kellogg.

Matthew C. Butler, South Carolina, 1877. Ground of contest was election by two legislatures. David T. Corbin, contestant, finally withdrew his contest.

Henry A. Du Pont, Delaware, 1895. The ground of contest was alleged illegality of election. After a debate extending at intervals, over a period of several months, Mr. Du Pont was declared, by a vote of 31 to 30, not to be entitled to a seat in the Senate.

Gerald P. Nye, North Dakota, 1925. Credentials were offered, but the committee considered the question whether the legislature had given the Governor power of appointment. It was decided the credentials were proper.

Cases of Investigation of Conduct Prior to Election

Humphrey Marshall, Kentucky, 1796. Senator Marshall himself requested investigation of charges of fraud and perjury made by the Governor and certain representatives of his State. The Senate committee was of the opinion "that as the Constitution does not give jurisdiction to the Senate, the consent of the party cannot give it; that the memorial ought to be dismissed."

Henry M. Rice, Minnesota, 1858. Credentials were presented May 12 and Rice was seated. Harlan of Iowa presented a resolution to investigate alleged fraud against Rice when agent of the Secretary of War. The Committee on Military Affairs reported that there was nothing to sustain the allegation.

Powell Clayton, Arkansas, 1872. The Senate appointed a select committee to inquire into the conditions of the late insurrectionary States, so far as regards the execution of the laws and the safety of the lives and property of citizens of the United States. They took testimony in regard to conduct of Clayton in using improper means to secure election, but the evidence did not sustain the charges.

Lafayette Grover, Oregon, 1877. On March 2 credentials were presented. March 7 a memorial of citizens of Oregon protested against the admission of Grover. March 8 he was admitted. The Committee on Privileges and Elections investigated and on June 15, 1878, reported that evidence did not sustain the charges.

Stanley Matthews, Ohio, 1877. A select committee was appointed June 5, 1878, to consider his connection with frauds in the election in Louisiana in 1876, and with promises of reward to a certain Anderson. Since Congress had adjourned, they could not compel the testimony of James A. Anderson. The committee met in December, 1878, examined the testimony of Anderson taken before a committee of the House, and found Matthews innocent.

Reed Smoot, Utah, 1903. Mr. Smoot was sworn in. January 27, 1904, a resolution was agreed to, authorizing an investigation into charges of disqualification because of his being an apostle in the Mormon Church. After four years, on June 11, 1906, the committee reported a resolution "That Reed Smoot is not entitled to a seat as a Senator of the United States from the State of Utah." A two-thirds vote was required by amendment to the resolution and the resolution did not carry.

William Lorimer, Illinois, 1910-12. Two investigations: The first. Lorimer took his seat on June 18, 1909. Allegations of bribery were made by men of Illinois, and the Senate, on June 20, 1910, directed the Committee on Privileges and Elections or a subcommittee to investigate and report to the Senate. December 21, 1910, the report was presented, a majority agreeing to exonerate Lorimer. The Senate, March 1, 1911, declared him duly and legally elected to his seat.

Second investigation. On June 4, 1911, a resolution for investigation was passed. May 20, 1912, five of the committee reported they could find no evidence in all the testimony that William Lorimer was personally guilty of corrupt practices in securing his election. Senators Kenyon, Kern and Lea submitted a minority report with the resolution that "corrupt methods and practices were employed in the election of William Lorimer to the Senate of the United States from the State of Illinois, and that his election was, therefore, invalid." On July 13 this resolution was adopted, by a 55-to-28 vote.—*Extracts, see 15, p. 322.*

Cases Where Senate Seats Have Been Declared Vacant by Less Than Two-Thirds Vote

Albert Gallatin, Pennsylvania, December, 1793, to February, 1794. The motion that Gallatin "was duly qualified for a seat in the Senate was lost, by a vote of 14 to 12, on the ground that he had not been a citizen for nine years.

James Shields, Illinois, 1849. Oath was administered March 6 and credentials referred to a select committee. The report on March 13 carried a resolution "that the election of James Shields to be a Senator of the United States was void, he not having been a citizen for the term of years required." Shields then tendered his resignation.

James Harlan, Iowa, 1856-57. A majority of the members of the Iowa Senate were not present when the legislature elected Harlan. On December 15, 1856, Harlan was admitted. The Committee on the Judiciary reported "that the seat of the aforesaid gentleman be declared vacant," which passed by a vote of 28 to 18.

John P. Stockton, New Jersey, 1866. Although Stockton took his seat in December, 1865, a memorial of protest was filed and referred to the Committee on Judiciary. The resolution of the committee was amended to read that John P. Stockton was "not entitled to a seat," and passed, 23 to 20, in March, 1866. The question was whether a joint convention in the State could prescribe a plurality rule for election of Senator, and whether Mr. Stockton's own vote could be counted.

William Lorimer—(See cases of investigation of conduct prior to election.)

Smith W. Brookhart, Iowa, 1926. According to the official count in the State of Iowa, Brookhart received a majority. The result was contested by Daniel F. Steck, but Brookhart took the oath. After investigation of the ballots by the Committee on Privileges and Elections, Steck was declared duly elected by a vote of 45 to 41. This action automatically unseated Senator Brookhart.—*Extracts, see 15, p. 322.*

Cases of Invalid Credentials Presented in the Senate

Kensey Johns, Delaware, 1794. Appointment was not valid, since a session of the State Legislature had intervened between the resignation of Senator Reed and the appointment of Mr. Johns.

William Blount and William Cocke, Tennessee, 1796. Governor had no power to certify credentials prior to admission of the State.

James Lanman, Connecticut, 1825. Governor had not the power to issue the credentials.

Elisha Potter vs. Asher Robbins, Rhode Island, 1833. The legislature was not properly constituted.

Fishback, Baxter and Snow, Arkansas, 1864-1865. A legislature under military control could not elect Senators because they were not a republican form of government.

Cutler, Smith and Hahn, Louisiana, 1864. The State was in insurrection.

James Segar and John C. Underwood, Virginia, 1865-1884. Power of legislature was in question due to disturbances in the State.

Continued on page 322

Action Taken on Pending Smith and Vare Cases

April 8, 1926—Mr. Reed (Mo., D.) introduced in the Senate the following resolution (S. Res. 195):

Resolved, That a special committee of five, consisting of three members selected from the majority political party, of whom one shall be a progressive Republican, and two members from the minority political party, shall be appointed by the President of the Senate; and said committee is hereby authorized and instructed immediately to investigate what moneys, emoluments, rewards, or things of value, including agreements or understandings of support for appointment or election to office have been promised, contributed, made or expended, or shall hereafter be promised, contributed, expended, or made by any person, firm, corporation, or committee, organization, or association, to influence the *nomination* of any person as the candidate of any political party or organization for membership in the United States Senate, or to contribute to or promote the election of any person as a member of the United States Senate at the general election to be held in November, 1926. Said committee shall report the names of the persons, firms, or committees, organizations, or associations that have made or shall hereafter make such promises, subscriptions, advancements, or payments and the amount by them severally contributed or promised as aforesaid, including the method of expenditure of said sums or the method of performance of said agreements, together with all facts in relation thereto.

Said committee is hereby empowered to sit and act at such times and places as it may deem necessary; to require by subpoena or otherwise the attendance of witnesses, the production of books, papers, and documents, and to do such other acts as may be necessary in the matter of said investigation.

The chairman of the committee or any member thereof may administer oaths to witnesses. Every person who, having been summoned as a witness by authority of said committee willfully makes default or who, having appeared, refuses to answer any question pertinent to the investigation heretofore authorized, shall be held to the penalties provided by section 102 of the Revised Statutes of the United States.

Said committee shall promptly report to the Senate the facts by it ascertained.

April 13—The Illinois Senatorial primary was held with the following result:

Republican—Frank L. Smith, 624,023; William B. McKinley, 522,771. *Democratic*—George E. Brennan, 201,857 (unopposed).

May 18—The Pennsylvania Senatorial primary was held with the following results:

Republican—William S. Vare, 596,928; George Wharton Pepper, 515,502; Gifford Pinchot, 339,127. *Democratic*—William B. Wilson, 153,750 (unopposed).

May 19—S. Res. 195 (Reed, Mo., D.) was passed by a vote of 50 to 13, and the special committee was appointed, as follows:

James A. Reed (Mo., D.), Charles L. McNary (Ore., R.), Guy D. Goff (W. Va., R.), William H. King (Utah, D.), and Robert M. La Follette, Jr. (Wis., Rep. Progressive).

May 21—Mr. Reed (Mo., D.) offered S. Res. 227 authorizing the special committee to employ stenographic, clerical or other assistance and providing that all expenses incurred, including costs of travel by the committee, or their assistants, in furtherance of the purposes of the resolution, should be paid from the contingent fund of the Senate, the costs of investigation not to exceed $10,000.

June 3—S. Res. 227 was agreed to.

June 23—Mr. Reed (Mo., D.) offered S. Res. 258 to increase the cost of the investigation, for which payment was provided, to $50,000, which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

June 25—Mr. La Follette introduced S. Res. 261, declaring that through its provisions the Senate would be establishing a "corrupt practices" act to deal with primary elections of candidates for the United States Senate.

It provided for the following rule (Rule XLI) for "Admission of Senators" to be added to the Senate Rules:

I. No individual shall be entitled to a seat in the Senate unless the following provisions have been complied with:

A. There shall be filed with the Secretary of the Senate within 30 days after the date of the general or special election for Senator at which the name of such individual was presented, a statement containing—

1. A correct and itemized account of each contribution received by such individual or by his campaign manager from any source, in aid or support of his candidacy for nomination, or for influencing the result of the primary, with the name of the person who has made contribution.

2. A correct and itemized account of each expenditure made by the individual, with the name of the person on whose account such expenditure was made.

B. The statement shall be verified by oath taken before any officer authorized to administer oaths.

C. All expenditures made in aid of the candidacy for nomination of any such individual or for the purpose of influencing the result of the primary shall be made under the personal direction of such individual or through his duly authorized campaign manager or campaign committee. No expenditure shall be made for any purpose except the following:

1. For advertising in newspapers, magazines, and periodicals, in or on railroad cars, trolley cars, motor or other vehicles, or aircraft; or by means of banners, electric signs, motion pictures, wireless telephone or telegraph, or radio.

2. For maintenance of headquarters and for hall rentals incident to the holding of public meetings, and the preparation and printing of literature and the distribution thereof.

3. and 4. For the personal subsistence and traveling expenses of the individual, and of public speakers and agents employed in arranging for and conducting public meetings.

5. For payments required to be made pursuant to law by the individual to the State on account of such candidacy.

D. 1. Expenditures shall not be made by such individual or by his duly authorized campaign manager or campaign committee in excess of the amount which may lawfully be made under the laws of the State in which such individual is a candidate, nor in excess of the amount which may lawfully be made under the provisions of this rule.

2. Unless the laws of the State prescribe a less amount as the maximum limit of campaign expenditures, expenditures may be made in support of the candidacy of such individual up to (A) the sum of $10,000, or (B) an amount equal to the amount obtained by multiplying 3 cents by the total number of votes cast at the last general election in such State for all candidates for the office of Senator, but in no event exceeding $25,000.

3. Such individual shall not promise or pledge the appointment or the use of his influence for the appointment of any person to any public or private position to procure support in his candidacy.

II. Definition of Terms.

III. There is hereby created a special subcommittee of the Committee on Privileges and Elections, to be elected by the Senate. No Senator shall be eligible to serve on such subcommittee whose term expires prior to the beginning of the term of any individual whose qualifications the subcommittee is to consider. Such subcommittee shall, prior to the seating of any individual as Senator, examine into and investigate the statements hereby required to be filed, together with all other matters bearing on the qualifications of any individual under this rule. All credentials of Senators elect, and all such statements shall be transmitted by the Secretary to such subcommittee immediately upon receipt of the same by him. For the purposes of this rule the subcommittee is authorized to hold hearings and to sit and act at such times and places; to employ assistants; subpoena witnesses and to take such testimony and make such expenditures as it deems advisable. The expenses of such subcommittee shall be paid from the contingent fund of the Senate. Such subcommittee shall make a report to the Senate upon the qualifications of each individual together with such recommendations as it deems advisable.—*Extracts.*

July 3—The Committee on Rules to which the La Follette resolution had been referred was discharged from considering it further and the resolution was referred to the special committee investigating campaign expenditures.

July 3—First session, 69th Congress, adjourned.

June 9-July 4—The special committee held hearings at Washington on the Pennsylvania nominations.

July 26-August 5—The special committee held hearings at Chicago on the Illinois campaign.

October 18-27—The special committee took further testimony in Chicago in regard to the Illinois campaign; at Indianapolis concerning the Indiana campaign involving the Klan, and at Kansas City regarding the expenditures in the Democratic campaign for Congressman from Missouri.

October 23-29—Hearings were held by the special committee on corrupt practices in the election in the State of Washington; at Portland in regard to the Oregon election.

October 30-November 8—Hearings were held by the special committee on excessive expenditures in the Arizona campaign and at Los Angeles respecting the Boulder Dam Association.

November 2—Senatorial elections occurred in 32 States.

Votes in the Illinois election were as follows:

Frank L. Smith (R), 842,273; George E. Brennan (D), 774,943; Hugh S. Magill (Ind. Rep.), 156,245.

Votes in the Pennsylvania election were:

William S. Vare, 822,187; William B. Wilson, 648,680 (ran on both Democratic and Labor tickets).

December 6—Beginning of second session of the 69th Congress.

December 7—Announcement of the death of Hon. William McKinley, the senior Senator from Illinois.

December 9—The following resolution (S. Res. 290) was submitted by Mr. Dill (Wash., D.):

Whereas the special committee of the Senate appointed to investigate primary and election expenditures of candidates for the Senate has investigated the expenditures of William S. Vare and the testimony under oath by William S. Vare and those associated with him in securing the nomination proved that the said William S. Vare had expended and permitted to be expended in his behalf for the purpose of securing said nomination an amount of money in excess of $800,000; and

Whereas the expenditure of such an amount of money to secure a nomination for the United States Senate is contrary to sound public policy, harmful to the honor and dignity of the Senate, dangerous to the perpetuity of free government and taints with political corruption credentials for a seat in the Senate to which the said William S. Vare has been elected; therefore, be it *Resolved*, That the Senate hereby declares the said William S. Vare disqualified as a Senator elect from the State of Pennsylvania to present to the Senate or to have presented to the Senate for him credentials of his election to the Senate from the State of Pennsylvania, as a result of the primary election held May 18, 1926, and the election held November 2, 1926, and the Senate directs the officers of the Senate to refuse to receive the credentials, and should said credentials be in possession of any officer at the time of the passage of this resolution or come into his possession at any time thereafter he shall immediately return the same by registered mail to the said William S. Vare, together with a copy of this resolution, and the presentation of said credentials by any member of the Senate is hereby forbidden—*Extracts.*

December 9—Mr. Dill also offered S. Res. 291, declaring similar action in regard to Frank L. Smith of Illinois, who was reported by the press to be the appointee for the seat left vacant by the death of Senator McKinley.

Mr. Ashurst and Mr. Dill explained the resolution by pointing out provisions of 22 Stat. 632. (See p. 292, this number.)

December 16—Governor Small appointed Frank L. Smith to fill the vacancy caused by the death of Senator McKinley.

December 16—Mr. Ashurst (Ariz., D.) presented S. Res. 297, which was read:

Resolved that the qualifying oath be not administered to Hon. Frank L. Smith, the member designate, and that the special committee be directed to report to the Senate such recommendations as may, to said special committee, seem warranted.

December 16—Mr. Reed (Mo., D.) announced that the committee was submitting Part I of Report No. 1197 on "the Illinois situation."

Report No. 1197 was not printed in the Record. The report stated, in part, as follows:

"The State of Illinois has no statute restricting the amount which may be expended by any candidate, nor any law requiring the candidates or their committees to file a statement of such expenditures. The Federal Corrupt Practices Act has been declared unconstitutional by the Supreme Court in the Newberry case, in so far as the act applies to primary elections, and there is no duty imposed on the candidates or their committees to file with the United States Senate a statement of expenditures. Consequently, no such statements or accounts were officially made public and the total amounts, as drawn from the witnesses, some of whom were reluctant or protested the jurisdiction of your committee, are provisional."

The total disclosed expenditures in the primary campaign, according to the report, were:

McKinley (Rep.)	$514,143
Smith (Rep.)	458,782
Brennan (Dem., unopposed)	20,481
Total	$993,766

December 22—Mr. Reed of Missouri submitted and commented upon Part 2 of the Report of the Committee, which deals with the "Senatorial primary campaign in the State of Pennsylvania, the Senatorial general election campaigns in the States of Oregon and Washington, and the charges made by Harry R. Walmsley of Kansas City, Mo." The report (No. 1197) was not read into the Record. The candidates in the Pennsylvania Senatorial primaries were:

Republican: George Wharton Pepper, United States Senator, incumbent; Gifford Pinchot, Governor; William S. Vare, Member of Congress, First District of Pennsylvania.

Democratic: William B. Wilson, ex-Secretary of Labor.

The expenditures in the Pennsylvania primary are listed in the report.

Mr. Wilson, the Democratic nominee for the Senate, ran without opposition in the Democratic primaries. His expenditures aggregated $10,088.

The total cost of the Pennsylvania Republican Senatorial primaries was as follows: Pinchot, $187,029; Pepper-Fisher,* $1,804,979; Vare-Beidleman,* $785,934; total, $2,777,942.

January 8, 1927—Mr. Robinson (Ark., D.) presented the petition of William B. Wilson contesting the election of William S. Vare, and discussed the allegations made in the claim.

January 10—Sen. Res. 324 was offered by Mr. Robinson (Ark., D.) and referred to the Committee to Audit and Control the Contingent Expenses of the Senate. The resolution provides:

"That the special committee of five constituted under Sen. Res. 195, in addition to and not in detraction from the powers conferred in that resolution be authorized:

1. To take possession, in the presence of William S. Vare if he desires to be present or to have a representative present, and preserve all ballot boxes and other containers of ballots, return sheets, voters' check lists, tally sheets, registration lists and other records, books and documents used in the senatorial election held in Pennsylvania on November 2, 1927.

2. To take and preserve all evidence as to the various matters alleged in said petition, including any alleged fraud, irregularity, unlawful expenditure of money and intimidations of voters or other acts or facts affecting the result of said election.

3. That said committee is hereby vested with all powers of procedure with respect to the subject matter of this resolution that said committee possesses under S. Res. 195.

4. That the Sergeant at Arms of the Senate and his deputies are directed to attend the said special committee and to execute its

*John S. Fisher was candidate for Governor under the same management as the campaign for Pepper, Beidleman under the same as that of Vare.

directions. That the said special committee may appoint subcommittees of one or more members with power and authority to act for the full committee in taking possession of evidence and in the subpoenaing of witnesses and taking testimony.

Resolved further, That the expenses shall be paid from the contingent fund of the Senate, the cost not to exceed $15,000.

January 10—The Vice-President laid before the Senate the message from Governor Pinchot of Pennsylvania, which certified "that on the face of the returns filed in the office of the Secretary of the Commonwealth of the election held on the second day of November, 1926, William S. Vare appears to have been chosen by the qualified electors of the State of Pennsylvania."

January 11—S. Res. 324, quoted above, was brought up. Mr. Reed (Pa., R.) and Mr. Robinson (Ark., D.) debated the question whether this work should fall to the special investigating committee or to the Senate Committee on Privileges and Elections.

The resolution passed and the work was assigned to the special committee.

January 12—Hearings were held in Washington before the special committee pursuant to S. Res. 324.

January 19-20—Debates were held on the presentation of the credentials of Frank L. Smith, appointed by Governor Small of Illinois to succeed the late William B. McKinley as Senator. The credentials were offered by Mr. Deneen (Ill., R.) and were referred to the Committee on Privileges and Elections. The resolution submitted by Mr. Deneen, that the oath be administered to Mr. Smith, was amended, debated at great length and passed in the following form:

That the question of the prima facie right of Frank L. Smith to be sworn in as a senator from the State of Illinois, as well as his final right to a seat as Senator, be referred to the Committee on Privileges and Elections; and until such committee shall report upon and the Senate decide such question and right, the said Frank L. Smith shall not be sworn in or be permitted to occupy a seat in the Senate.

February 5—Part 3 of Report No. 1197 of the Special Investigating Committee submitted by Mr. King (Utah, D.), member of the committee, was devoted to the Arizona situation.

February 12—Mr. Reed (Mo., D.) submitted Part 4 of Report No. 1197 of the Special Committee.

The report concluded: "Your committee conceives the purpose for which it was created to have been that it should ascertain not only whether those seeking entrance into the Senate gained their apparent nomination and election by fair and honest means, but also to ascertain all facts touching the methods of conducting election which would be of advantage to the Congress in framing proper statutes to govern the conduct of elections. Your committee reports the facts for such action as the Senate may deem mete and proper."

February 21-26—The special committee held hearings on the Smith case, at the Senate Office Building, Washington, D. C. The principal witnesses were Robert E. Crowe, Daniel J. Schuyler and Samuel Insull.

February 24—S. Res. 364 was submitted by Mr. Reed (Mo., D.). On February 21 it was read in the Senate:

Resolved, That S. Res. Numbers 195, 227, and 258 of the 69th Congress, first session, and the S. Res. No. 324 of the 69th Congress, second session, be continued in force during the 70th Congress.

That the special committee created pursuant to the Senate Resolution No. 195 of the 69th Congress, first session, is authorized in its discretion to open any or all ballot boxes and examine and tabulate any or all ballots and scrutinize all books, papers and documents which are now in its possession or any that shall come into its possession, concerning the general election held in Pennsylvania on November 2, 1926.

Resolved, further, That the general authority of the said special committee is hereby extended to cover the nomination of any Senator at any general election held during the year 1926.

Attempts during the last few days of the session to form a unanimous-consent agreement to consider this resolution immediately after the Deficiency Appropriation bill appears to have prevented passage of both. S. Res. 364 died with the close of the Congress on March 4, 1927.

February 28—Part 5 of the Report No. 1197 was submitted by Mr. Goff (W. Va., R.) of the Special Investigating Committee.

March 3—Mr. Reed (Pa., R.) presented the credentials of William S. Vare, as follows:

To the President of the Senate of the United States:

Whereas it appears that the certificate of election heretofore issued on the 8th day of January, 1927, by Hon. Gifford Pinchot, then Governor of the State of Pennsylvania, to William S. Vare, to represent said State in the Senate of the United States for the term of six years beginning on the 4th day of March, 1927, does not conform with the certificate prescribed by resolution of the United States Senate; and

Whereas the said William S. Vare has presented a certificate in writing bearing the date of February 28, 1927, for an amended certificate in regular form:

Now, therefore, this is to certify that on the 2d day of November, 1926, William S. Vare was duly chosen by the qualified electors of the State of Pennsylvania, a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 4th day of March, 1927. Signed by John S. Fisher, Governor, and Charles Johnson, Secretary of the Commonwealth.

The Senate agreed to a motion to refer the "alleged credentials of William S. Vare, issued by Governor Finchot, together with the letter of Governor Pinchot relating thereto, and also the alleged credentials issued by Governor Fisher," to the Committee on Privileges and Elections.

March 3—Mr. Deneen of Illinois presented the credentials of election of Frank L. Smith, which were referred to the Committee on Privileges and Elections.

March 4—Mr. Ernst (Ky., R.), Chairman of Committee on Privileges and Elections, submitted a report covering all credentials, except the credentials of Frank L. Smith of Illinois and William S. Vare of Pennsylvania, stating that the Senators-elect therein named were duly elected to the Senate by their respective States. No recommendations of any kind were made.

With respect to the appointment of Frank L. Smith to be a member in the 69th Congress, the committee said: "Owing to the illness of Mr. Smith, the committee was not able to complete its hearings," and the matter was still pending before the committee.

March 4—Mr. Ernst submitted the report upon the certificates of election of Frank L. Smith and William S. Vare, as follows:

Frank L. Smith: Certificate of Hon. Len Small, Governor of the State of Illinois, that on the 2d day of November, 1926, Hon. Frank L. Smith was chosen by the qualified electors of the State of Illinois, as Senator from Illinois to represent that State in the Senate of the United States for the term of six years, beginning on the 4th day of March, 1927.

William S. Vare: Certificate of Hon. John S. Fisher, Governor of the State of Pennsylvania, that at the election held on the 2d day of November, 1926, Hon. William S. Vare was duly chosen by the qualified electors of the State of Pennsylvania a Senator from said State to represent that State in the Senate of the United States for the term of six years, beginning on the 4th day of March, 1927.

March 4—Adjournment of the 69th Congress.

April 7—Mr. Goff (W. Va., R.) resigned his place on the Special Investigating Committee.

April 8—Vice-President Dawes appointed Mr. Fess (Ohio, R.) to fill the vacancy, thus recognizing the continuance of the committee.

April 9—Mr. Keyes (N. H., R.), Chairman of the Committee to Audit and Control the Contingent Expenses of the

Senate, despite the ruling of Vice-President Dawes, refused to authorize funds for use of the committee.

April 12—Mr. Fess refused to accept the appointment to serve on the Reed committee.

July 12—Judge Thompson of the District Court for the Eastern District of Pennsylvania rendered the decision in the case of James A. Reed *et al.* vs. The County Commissioners of Delaware County, Pennsylvania. In pursuance of S. Res. 324, the Special Investigating Committee had appointed Mr. Jerry C. South, attorney, to take and seal all the ballot boxes used in the Pennsylvania election and keep them in Washington for use of the committee. The respondents in the case, custodians of the ballot boxes, denied that the committee had a right to obtain the ballots. The decision was in favor of the respondents, denying that the Reed committee had authority after the adjournment of Congress to investigate or to perform tasks authorized by S. Res. 324.

The Reed committee appealed from the decision of the District Court to the Circuit Court of Appeals.

July 29—Judge Thompson issued a temporary restraining order "upon consideration of the petition filed by the plaintiffs" that the custodians of the ballot boxes be enjoined from delivering any of the contents of the boxes to any of the election officials of Delaware County, and restraining the officials from destroying any of the contents of the ballot boxes.

August 5—Mr. Watson* (Ind., R.), acting chairman of the Senate Committee on Privileges and Elections, directed the sergeant-at-arms to take charge of the ballots for the Senate.

August 8—David S. Barry, sergeant-at-arms of the Senate, wrote to the judges in the Courts of Common Pleas in all the counties of Pennsylvania, asking if they would turn over the ballot boxes to the Senate. Under the Pennsylvania laws these judges are the custodians of the ballot boxes. Seven of the judges agreed to do so, but of the remainder some objected on the ground of doubt as to their authority and others brought up the question of the cost of collecting the ballot boxes from the nearly 9000 precincts and also the cost of new ballot boxes.

August 17—After a conference with the counsel for Vare and Wilson, Mr. Barry sent letters to the county judges, in which he asked that the election officers in all precincts put the contents of the ballot boxes in the lock mail pouches on the next primary election day and deliver them into the custody of the prothonotaries of the courts to await the order of the United States Senate and that the expenses of the transfer would be paid by the Senate. Later, Mr. Barry suggested that the expenses of transferring the ballots from the precincts to the courts should be advanced by Vare and Wilson, the advances to be refunded when the Senate appropriated the money. Attorneys for Wilson would not agree to defraying expenses and it was decided that counsel should draw up a petition to be signed by their friends in Pennsylvania, the petition to be presented to the county judges. These petitions were drawn, but were not agreed to.

September 7—A joint meeting was held in Chicago of the Special Investigating Committee called by Mr. Reed and the Committee on Privileges and Elections called by Mr. Watson (Ind., R.). The attorneys for Vare and Wilson were invited to appear before this meeting to work out a plan for impounding the ballots. The Vare attorneys declined to recognize any authority on the part of the Reed committee, but accepted the invitation of the Committee on Privileges and Elections. The Vare attorneys suggested that they and the Wilson attorneys go to the three Federal District Courts in Pennsylvania with petitions asking that those courts take custody of the ballots and that the United States marshals be assigned the task of collecting them. This plan was approved by both committees, and the courts, upon receipt of the petitions, ordered the collection of the ballots. They were collected by the marshals and assembled in ten or twelve different localities after having been transferred to mail pouches.

As directed by the two Senate committees in joint session at Chicago, Wilson defrayed the cost of collecting in four counties and Vare paid the cost in the other 61 counties, the United States marshals submitting vouchers for money expended in collecting the boxes and transferring and assembling the ballots.

As the prothonotaries transferred the ballots from the boxes to other containers he certified on the new container the condition of each ballot box and the condition of the ballots it contained at the time of transfer.

Except for the ballots from Allegheny and Philadelphia Counties, which are in Washington, all the ballots are now in the hands of the prothonotaries of the counties, awaiting the decision of the Court of Appeals.

October 13—Case of James A. Reed *et. al.* vs. County Commissioners of Delaware County was argued in the United States Circuit Court of Appeals for the Third circuit.

Possible Procedure by Senate in Pending Cases

POSSIBLE action on the Smith and Vare cases may be summarized as follows:

1. The oath may be administered; Smith and Vare be declared entitled to their seats and no further action taken.

2. Protest may be made to the administering of the oath, by motion to recommit the credentials to the Committee on Privileges and Elections (or to a special committee) for investigation.

In case the credentials are recommitted by action of the Senate before the oaths are administered, Smith and Vare would be denied their seats until the committee report is received and acted upon by the Senate.

3. The oath may be administered and the charges referred to a committee for further investigation.

After the report of an investigating committee, the seat may be declared vacant by resolution of the Senate or a resolution may be passed declaring Smith and Vare duly seated, or in case no action is taken they will retain their seats.

The taking of the oath by Mr. Vare will not prevent the Committee on Privileges and Elections from continuing its consideration of the petition of William B. Wilson, Mr. Vare's opponent, contesting the election. This petition was referred to the committee by the Senate during the Sixty-ninth Congress and is still before the committee.

Under a Federal statute (see p. 293), affecting Senators-elect, Smith and Vare have been drawing their salaries as Senators since the beginning of their terms and are occupying offices in the Senate Office Building in Washington.

*The term of Mr. Ernst (Ky., R.), Chairman of the Committee, expired with the 69th Congress. Mr. Watson is the ranking Republican member of the Committee.

Can a Senator-Elect Be Denied His Seat?

Pro

HON. THOMAS J. WALSH
U. S. Senator, Montana, Democrat

THERE is involved in the question now before us a very important point of law touching the powers of the Senate in the premises. The Constitution gives to each House of Congress the right to judge of the elections, returns and qualifications of its members. It likewise provides that no person shall be a Senator who shall not have attained the age of 30 years, been nine years a citizen of the United States, and at the time of his election a resident of the State from which he is chosen.

It is contended on the one hand that the Senate, in judging of the qualifications of its members, is restricted to the three qualifications or disqualifications thus enumerated in the Constitution, and that it has no power to go beyond them. It is, upon the other hand, asserted that the power of the Senate is not thus limited. Those who assert the limitation of the powers of the Senate in the terms as indicated must, of course, maintain that if a man appears here with credentials fair upon their face—no matter what crimes he may have committed, however atrocious they may have been—if he is 30 years of age, a citizen of the United States for nine years and a resident of the State from which he is chosen the power of the Senate is gone and he must be admitted. That is to say, though he may be a confessed traitor to the Government of the United States, though he may have committed murder or any other crime denounced in the Decalogue or in the statutes of his State or of any State, the Senate is powerless to exclude him from this body provided he has the qualifications of age, citizenship and residence enumerated in the Constitution.

On the other hand, if the other contention is admitted, that the power of the Senate to judge of the qualifications of its members is not so limited, it must be admitted that the power is almost, if not quite, unlimited. So the Senate might conceivably exclude a man because we did not like his politics or his views upon economic questions or the cut of his clothes or the color of his hair. But we are obliged to choose either the one or the other construction of the Constitution as seems to us most accurately to carry out the intent of the framers of the Constitution and to safeguard the institutions of the country.

As the power of the Senate in the premises is exactly the same as the power of the House, the polygamy case may well be regarded as a governing precedent, for the Constitution, it will be perceived, gives the same powers to each body.

"Each House shall be the judge of the elections, returns and qualifications of its members."

I refer to the case of Brigham H. Roberts, who came to the House of Representatives armed with entirely proper credentials; that is, credentials entirely fair on their face. He had all of the constitutional requirements, or at least was not subject to any of the constitutional disqualifications. But it was charged against him and established eventually that he had four wives. The House refused to permit him to take the oath, but referred his credentials to the proper committee, which reported against him eventually and he was excluded from the body.

This is the language of the majority report of the House of Representatives in the Brigham H. Roberts case, concurred in by the other branch of Congress by an overwhelm-

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Con

HON. LEE S. OVERMAN
U. S. Senator, North Carolina, Democrat

JOHN RANDOLPH once said: "When does a man become a Senator? Not until he takes his oath of office." When Smith takes his oath of office we then can try him, and if there is a charge against him we should try him, as provided in the Constitution.

The Constitution says there are only three things for us to consider: The first is the man's age, the second is his citizenship, and the third is his habitation. It is admitted that the appointee has the proper age. It is admitted that he is a citizen of the United States. It is admitted that he is a resident of Illinois. Does he not then comply with every qualification named in the Constitution? Must we violate the Constitution and destroy the States in order to purify the portals of this Chamber?

I recall not only Charles Sumner and Trumbull, but I recall Allen G. Thurman, of Ohio, and I read what he said in a similar case:

"The certificate of election of a Senator was prima facie evidence of his right to a seat and sufficient until it was overthrown. There was not, and there is not, as I had occasion to observe then, after a most careful examination of the precedents, a single case in the whole history of this Government in which that rule has been departed from."

That is, the right of a Senator upon the certificate, having the age and the citizenship and the qualifications named in the Constitution, to be seated.

I admit that many cases have been referred to committees. I do not object to that being done in this case; I do not know but that I will vote for that. But I think the Senator ought to be seated without referring.

If the procedure here attempted and advocated by some had been the rule from 1868 to 1876 there would not have been a Southern Senator upon this floor; not one. Two cases come to my mind. General Morgan, a Confederate general and later one of the great Senators in this body, known far and wide for his ability, came here with his credentials. The remarkable thing about the case—which is analogous to this—is that there had been a committee appointed by the Senate known as the "southern outrage" committee, which went to Mississippi, which went to Alabama, which went to all the Southern States and investigated the "Southern outrages"—so called—and came back and reported. Then Morgan came here with a certificate; and then there was a charge that there was fraud in his election. He was admitted. So with Lamar. There were two of the great Southern men. So with Ransom, from North Carolina, and other Senators, who were admitted to the Senate upon their certificates just as Smith is entitled to be admitted upon his certificate. Then, if charges are made, there is nothing to prevent a trial.

One Senator has argued that we would have to expel Smith if he were once seated. I do not know whether that is so or not, but I doubt it. I think after he gets to be a Member of the Senate we can declare his seat vacant, as we did in the Lorimer case, as the resolution in the Stephenson case provided, as the resolution in the Newberry case provided. We could declare the seat vacant. Why could that not be done in this case, if the Senator is guilty.—*Extracts, see 4, p. 322.*

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HON. THOMAS J. WALSH—continued

ing vote: "Both Houses of Congress have in innumerable instances exercised the right to stop a member elect at the threshold." So well settled was the right of Congress in the premises that when President Grant sent a message to the Congress of the United States during his term, which commenced, it will be remembered, in 1872, he said:

"In the admission of Senators and Representatives from all of the States there can be no just ground of apprehension that persons who are disloyal will be clothed with the powers of legislation, for this could not happen when the Constitution and the laws are enforced by a vigilant and faithful Congress. Each House is made the judge of the election, qualifications and returns of its own members, and may, with the concurrence of two-thirds, expel a member. When a Senator or Representative presents his certificate of election he may at once be admitted or rejected; or, should there be any question as to his eligibility, his credentials may be referred for investigation to the appropriate committee. If admitted to a seat, it must be upon evidence satisfactory to the House of which he thus becomes a member that he possesses the requisite constitutional and legal qualifications. If refused admission as a member for want of due allegiance to the Government and returned to his constituents, they are admonished that none but persons loyal to the United States will be allowed a voice in the legislative councils of the nation and the political power and moral influence of Congress are thus effectively exerted in the interest of loyalty to the Government of the United States and fidelity to the Union."

I am going to refer to the case of Benjamin Stark, who in the year 1862 presented his credentials to the Senate as a Senator from the State of Oregon.

The credentials were in the ordinary form, but motion was made to deny the oath until after committee action.

Mr. Trumbull of the State of Illinois said:

"It is not true that credentials have not been referred before parties have been sworn in the Senate. Usually where the credentials were fair upon their face, the person claiming a seat has been sworn in as a member, but the practice has not been uniform. There are a number of cases where the credentials themselves were referred, cases where Senators were refused their seats, and where Senators received their seats after the credentials had been referred."

Mr. Sumner's comments were made when the very question was before the Senate as to its right to refer credentials for inquiry before the member designate or elect was sworn in. Mr. Sumner said:

"It is said that the proposition now before the Senate is without a precedent. New precedents are to be made when the occasion requires. Never before in the history of our Government has any person appeared to take a seat in this body whose previous conduct and declarations as presented to the attention of the Senate, gave reasonable ground to distrust his loyalty. It belongs, therefore, to the Senate to make a precedent in order to deal with an unprecedented case. The Senate is at this moment engaged in considering the loyalty of certain members of this body, and it seems to me it would poorly do its duty if it admitted among its members one with regard to whom as he came forward to take the oath there was a reasonable suspicion."

So this is an unprecedented case. I think the record of the precedents of this body will be searched in vain for a case in which charges against a member elect or designate had already been investigated by the Senate and a report

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JAMES M. BECK

Former Solicitor General of the United States

THE all-important consideration is that under the Constitution the States reserved to themselves, and the peoples thereof, the right to select their own representatives in the Senate. While the right of the Senate to determine whether an individual, who claims to be thus elected, has actually been elected at the general election is clear, and while it also has the right to determine whether the men who have been selected as Senators by the States actually possess the qualifications prescribed in the Constitution, yet the right of the Senate to sit in judgment upon the action of sovereign States goes no further.

Whether a Federal law could or should be passed that arbitrarily fixes the amount of money to be spent in a primary election is another and very difficult problem. It takes no account of the difference in population in different States. It takes even less account of the fact that in some elections very little money can be legitimately spent, and that in other, and bitterly contested elections, where great questions of public policy are involved, large sums of money can be legitimately spent to educate the voter.

The legitimate expenditure of money to interest and educate voters serves a great public purpose. In populous States like Pennsylvania and Illinois, especially in a bitterly contested campaign, this requires a considerable expenditure of money. Pennsylvania has a population of nearly 10,000,000. To reach nearly 2,000,000 voters by printed literature, press advertisements and public meetings requires a considerable expenditure of money. To say arbitrarily that the expenditure of a given amount is necessarily illegal is to adopt a ruling which has no justification either in morals or in the experience of mankind.

We are, however, only now concerned with the fundamental question of the power to nullify the action of a sovereign State. It goes to the very foundation of constitutional government.

The provision that each House is judge of the qualifications of its members unquestionably invests each House with the right to determine whether a man, who claims to have been elected to either House, was in fact elected; and, if so, whether he possesses the requisite qualifications, but these qualifications are obviously those which have already been prescribed in the Constitution as to age, the period of his citizenship and the fact that he is an inhabitant of the State which he seeks to represent. To hold that "qualifications" has a broader meaning and invests the right in either House to determine whether the chosen representative of the State is in other respects fit to take his seat, would be a nullification of the right of the people in each State to select their representatives, and the right of the legislature of each State to select the Senators. It is preposterous to claim that the word "qualifications" means intellectual or moral fitness, for if this were so, the rights of the States to be represented in the Congress in their own way would be reduced to the vanishing point. In such event, the States would simply nominate a representative in the Senate, and the Senate would pass upon his fitness, and this, as already shown, was the very proposition that was voted down in the Constitutional Convention when it was proposed that, as to members of the Senate, the legislatures of the States should merely nominate an eligible list and the Federal House of Representatives should then make the final selection.

A very significant paragraph [of the U. S. Constitution] is Section 5:

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HON. THOMAS J. WALSH—continued

unfavorable to the member was before this body. Therefore, if it were necessary, as suggested by Senator Sumner, we might well establish a new precedent in this case; but, as I shall demonstrate, the course suggested is in no sense a departure from the established practice of the Senate.

Mr. Sumner had something more to say about this matter.

"But it is argued that the Constitution has provided for the expulsion of a Senator by a vote of two-thirds, and that there can be no inquiry on the threshold, except with regard to the qualifications of age, citizenship and inhabitancy of the State whose certificate he bears. If this be true, then open treason itself would not be a disqualification; and the traitor, if allowed to go at large, might present his certificate and proceed to occupy a seat in this body. To admit a claimant charged with disloyalty to a seat in the Senate, in the hope of expelling him afterwards, is a voluntary abandonment of the right of self-defense, which belongs to the Senate as much as to any individual."

In the light of everything that was done by the Senate in the Stark case the Senate was called upon to consider the Philip F. Thomas case, from the State of Maryland. Thomas was charged in the same way with disloyalty. He had been Secretary of the Treasury during the Administration of President Buchanan, and resigned because he disagreed with the President in sending aid to the beleaguered forts in South Carolina. His son joined the Confederate Army, and in departing for that purpose the father gave him $100. That was the whole charge against him. An effort was made to exclude him. He was denied the right to take the oath, and eventually was excluded from the body. Mr. Edmunds voted that Mr. Thomas be refused the oath and voted to exclude him from the Senate. He said:

"Now, to return, the question first is, What are our rights under the Constitution over this man without regard to the Statute and without regard to any overruling necessity? The Constitution declares, and that is all that it says upon the subject that is pertinent here:

" 'No person shall be a Senator who shall not have attained the age of 30 years, and been 9 years a citizen of the United States, and who shall not, when elected be an inhabitant of that State for which he shall be chosen.'

"Senators will observe that these are negative statements; they are exclusive, every one of them. It is not declaring who shall be admitted into the Senate of the United States. It is declaring who shall not be eligible to election to this body; that is all. It is the same as to the House of Representatives and as to other officers—always in the negative, always exclusive, instead of in the affirmative and inclusive. And upon what principle was this Constitution founded? The House of Commons in Parliament, using the very language that in another section of the Constitution is used here, were the exclusive judges of the elections, returns and qualifications of their own members. What was their constitutional power under that rule? It was that they were the sole and exclusive judges not only of the citizenship and of the property qualifications of persons who should be elected, but of everything that entered into the personnel of the man who presented himself at the doors at the House of Commons with a certificate of election for admission. And what were those rules? One was that an idiot could not be a representative in the Commons; another was that an insane man could not be; and a variety of other disqualifications of which the Commons themselves alone were the sole and exclusive judges.

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JAMES M. BECK—continued

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

It is very significant that the power of expulsion is dealt with in a different paragraph from the power given the Senate and the House in the preceding paragraph, to determine whether one, who claims to have been elected, has in fact been elected, and if so, whether he possesses the "qualifications" which are prescribed in the Constitution. The two powers are distinct, and this is not merely indicated by the fact that they are dealt with in separate paragraphs, but by the even more significant fact that, while the question of an election and of the possession of the constitutional qualifications may be determined by a majority vote, the right to expel a member who has been given his seat requires a two-thirds vote.

It is, however, clear that the act which would justify his expulsion must have taken place since his election. What he did prior to his election and qualification has been passed upon by the people of his State. In a political sense, it is res adjudicata. A candidate for the Senate might have been guilty of embezzlement before his election, but the right of the people of that State to send an embezzler to the Senate, if it sees fit, is clear. Such decision is the sole right of the State.

It must not be supposed that the general grant of power to each branch of Congress to determine the "qualifications" of its members gives them an unlimited discretion in determining the question of membership in the body. The general language which the Constitution uses must be read in connection with the entire instrument and, thus read, it is unreasonable that the power to judge of the "qualifications" of its own members was, or is, intended to destroy the rights of the States to select their own representatives in Congress.

It will be noted that the Constitution in the Seventeenth Amendment expressly says that the Senators from each State shall be "elected by the people thereof." It only interferes with the manner of the election in its provision that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures. Otherwise, the peoples of the State may have such election laws as they think proper, provided, of course, that they do not offend the Fifteenth Amendment as to race or color, and the Nineteenth Amendment as to sex. In other respects the State is left free. It may have a primary law or no primary law. It may have a property qualification or no property qualification.

It seems too clear for argument that each State has the right to select from its people any representative in the Senate that it sees fit, irrespective of his intellectual or moral qualifications, and that the only limitations upon such choice are that he shall be thirty years of age, a citizen of the United States for at least nine years, an inhabitant of the State, and that he shall not have engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof, unless in the latter contingency, the Congress, by a vote of two-thirds, shall remove such disability.

In all other respects the right of the State is absolute and unimpaired. A State may have selected a member of the Senate or secured his nomination by unworthy means. He may have spent more to secure such nomination than many would think proper or legitimate. He may be intellectually unfitted for the high office, and his moral character may, in other respects, leave much to be desired.

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HON. THOMAS J. WALSH—continued

"We declared in our Constitution that a certain class of persons should never under any circumstances, whatever their qualifications might be, be Senators of the United States; no alien should be a Senator.

"Did it therefore follow that every citizen, male or female, black or white, rich or poor, sane or insane, innocent or criminal, should be a Senator? Not by any means, I take it. We declared then that no person should be a Senator who was not a citizen, who had not a certain qualification of residence and of age, and there we stopped the rule of disqualification, leaving the common law exactly where it stood before; and that common law, in the very language of its immemorial time, was inserted in another section of the instrument, which declared that this body should be the judges of the elections returns and qualifications of its members. And that very word 'qualification,' by the known history of jurisprudence, had the scope and signification that I have named; and that was, that it was the duty of the body to apply it to the candidate, to keep itself pure from association with criminals and incompetent persons."

Thomas was excluded and was denied the right to take the oath. That is the rule there.

A large number of other cases of the same general character came before the other body, and the rule was perfectly well established, after more or less variation, just the same as in the case of the Senate, that when serious charges of that character were made against the man coming here with credentials fair upon their face, the credentials were referred to the committee for inquiry, and if the charges were sustained he was excluded, meanwhile being denied the right to take the qualifying oath.

It is very seriously urged, and argued with much plausibility—although I do not accede to that view—that once a Senator has been admitted to this body, and the question is unrelated to his election or the validity thereof, he cannot be expelled for any cause arising antecedent to and unrelated to his election; so that if we shall now administer the oath to member designate from the State of Illinois it will be contended that it is impossible for us to get rid of him hereafter.

I think it cannot be disputed by anyone, either upon reason or upon the precedents of both houses, that when a man appears here—a member designate or elect—with credentials fair upon their face, it is entirely within the discretion of the Senate either to administer to him the qualifying oath and then refer to the proper committee for consideration any charges that may be made against him, or it may in the first instance and at the threshold exclude him, if it desires to do so, and refer the charges against him to the proper committee for inquiry.

If the former course has been the one more commonly followed, it was because in these cases the charges appertained to the legality of the election of the member claiming the seat, of the facts in relation to which the Senate had no official information of any character whatever. That is the nature of nearly every case. This is an unusual case, as I have said before, and warrants unusual procedure.

The Senate exercises its wise discretion in the premises; and it is for each individual Senator to say whether that discretion ought to be exercised by allowing the member designate from the State of Illinois to take the oath or by referring his credentials for consideration to the appropriate committee. I have no hesitancy, for myself, in saying that the latter course is the one that ought to be pursued.—*Extracts, see 4, p. 322.*

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JAMES M. BECK—continued

The people of the United States may justifiably think that the State has sent to Congress an unfit man, who could add nothing to its deliberations, and whose influence may well be pernicious. None the less, the State has the right to send him. It is its sole concern, and to nullify its choice is to destroy the basic right of a sovereign State, and amounts to a revolution.

Mr. Justice Story stated in his classic work on the Constitution (5th Edition, pages 460-463) that neither the Congress of the United States nor the States could superadd any qualifications to those prescribed in the Constitution for membership in the Senate and in the House of Representatives. He said:

"It would seem but fair reasoning upon the plainest principles of interpretation that when the Constitution so established certain qualifications as necessary for office, it meant to exclude all others as prerequisites. From the very nature of such a provision, the affirmation of these qualifications would seem to imply a negation of all others."

The Senate adopted this view as early as 1855, in seating Lyman Trumbull of Illinois, whose seat had been challenged on the ground that he had been elected a judge of the State Court for a term which had not expired at the date of his election to the Senate. He had resigned two years prior to his election and the State Constitution had provided that no person could be elected to an office within two years after the expiration of his term of office. Senator Crittenden said, in his speech on March 3, 1856, in answer to the minority views that qualifications for Senators could be superadded to those specified in the Constitution:

"According to the plain meaning of the Federal Constitution, every inhabitant of a State, thirty years of age, who has been nine years a citizen of the United States, is eligible to the office of Senator. What more can be said about it? It is now supposed by those who contend that Mr. Trumbull is not entitled to his seat that it is competent for a State, by its Constitution—and I suppose they would equally contend by any law which the legislature might from time to time pass—to superadd additional qualifications. The Constitution of the United States, they say, has only in part regulated the subject, and therefore it is no interference with that Constitution to make additional regulations.

"This, I think it will be plain to all, is a mere sophism when you come to consider it. If it was a power within the regulation of, and proper to be regulated by, the Constitution of the United States, and if that Constitution has qualified it, as I have stated, prescribing the age, prescribing the residence, prescribing the citizenship, was there anything more intended? If so, the framers of the Constitution would have said so. The very enumeration of these qualifications excludes the idea that they intended any other qualifications."

The right of a State to equal representation and vote in the councils of the nation was one of the great compromises of the Constitutional Convention. The Constitution could never have been either framed or ratified had there been any idea in the minds of the leaders of that period that a State might be deprived of its equal representation and vote in the Senate, and what is of equal, if not greater importance, the right itself to select its representative. It was stated by the Supreme Court of the United States in the Newberry case (256 U. S., 243), where an attempt was made to convict Senator Newberry under an invalid Federal statute designed to regulate primary election of Senators, that:

"The history of the times indicates beyond reasonable

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HON. GEORGE W. NORRIS

U. S. Senator, Nebraska, Republican

THE expenditure of huge sums for seats in the United States Senate cannot be justified unless we desire to turn over that great legislative body to the multimillionaires of the country who are willing to buy legislation the same as though it were merchandise sold for cash to those who are willing and able to pay the price. If this practice is to be condoned, then we have placed seats in the highest legislative assembly upon the auction block and we have by indirection defeated every fundamental principle that underlies our governmental structure.

Fortunately, when our forefathers framed the Constitution they provided in that great instrument that the Senate should be the sole judge of the qualifications and the election of its members. In other words, it made the Senate in such instances the supreme and final court. From its decree there is no appeal, and no court or other body of men can withhold its arm by injunction or other process. It has the right, under the Constitution, and in the proper case it is its duty, to hold that such vast sums of money spent for a nomination disqualifies the beneficiary from becoming a member of that body. In the Newberry case the Senate declared that such expenditure was "contrary to sound public policy, harmful to the honor and dignity of the Senate, and dangerous to the perpetuity of a free government."

It is clear also that the Constitution has given to the Senate the right to declare, as it has already done, that the expenditure of such sums of money to secure a nomination disqualifies the recipient from a seat in that body. If the Senate believes, therefore, what it has already declared, it follows that its duty in the case of Smith and Vare is to exclude them.

It is argued that the word "qualifications" in the Constitution refers only to the technical validity of the credentials of a Senator-elect. If "qualifications" does not mean qualifications except in a limited sense, and if that limited sense and meaning is to be defined by those who desire to have Mr. Smith and Mr. Vare admitted, then the Senate is helpless. There is no language, either direct or implied, anywhere in the Constitution that would justify such an interpretation. And, again, the Senate itself is the judge of what the word means and is under no compulsion either of reason or logic to accept the limited definition given by those who would take away from the Senate its right to perform its constitutional functions.

Mr. Beck's principal argument against giving the Senate the right to pass upon the question is that the Senate might, if it had this right, arbitrarily keep men out of the Senate without any valid reason whatever.

The truth is, it is a physical impossibility to confer power upon any body of men without at the same time conferring upon them the right to abuse that power. Somebody must have the right to pass upon the admission of Mr. Smith and Mr. Vare to the Senate, if their right to a seat is questioned, and whoever that may be, or whatever body it may be, might abuse the power and the discretion thus given them. If his argument is logical and effective, it would be impossible under any circumstances to set up a government of any kind.

The question to be met in the case of Mr. Smith and Mr. Vare is not a question of expulsion. It has to do with the qualifications of those who seek a seat in the Senate.

It is true that in other cases Senators elect who for one

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JAMES M. BECK—continued

doubt that if the Constitution makers had claimed for this section the latitude we are now asked to sanction, it would not have been ratified."

Subject to the qualifications as to age, citizenship and inhabitancy, the State assumes a responsibility for the fitness and character of the Senators elected to represent them.

The historical background of the Constitution leaves no room for reasonable doubt that the Constitution does not authorize the Senate to go back of the election and return of a Senator in order to pass upon his previous conduct, either moral or otherwise.

This principle was established in the early days of the Republic in the case of Humphrey Marshall. The Senate was then composed of many memberds who had sat either in the Constitutional Convention at Philadelphia or in the State ratifying conventions, or in both. Marshall had been charged with a crime under the laws of Kentucky, alleged to have been committed prior to his election. The charge was referred to a Senate committee and it reported that the Senate had no jurisdiction. saying:

"If, in the present case, the party has been guilty in the manner suggested, no reason has been alleged by the memoralist why he has not long since been tried in the State and district where he committed the offense. Until he is legally convicted, the principles of the Constitution and of the common law concur in presuming that he is innocent."

The Senate may have power to judge a Senator for acts committed after his election and when, for six years, he is beyond the control of the electors, without conceding that the Senate has the power to judge of acts committed by a Senator prior to election and which his constituents presumably disregarded in electing him to the Senate.

A third case in which the principle was sustained that the Senate was not concerned with the alleged acts of Senators prior to their election was that of Isaac Stephenson. It was found as a fact that at least $107,000 had been spent in support of his candidacy for nomination for Senator in the Wisconsin primary. This was in 1909 and prior to the Seventeenth Amendment to the Constitution, which authorized the election of Senators by popular vote. There was also failure to keep detailed accounts of expenditures, the destruction of memoranda relating to the primary, the shifting of records and papers concerning the primary from one place to another to avoid the Senate committee. The reports of the committee were not placed on the ground that the Senate had neither jurisdiction nor power to expel Stephenson for something that occurred prior to his election by the State legislature, but it is equally true that the historical background of the provision of the Constitution, authorizing the Senate to judge the elections, returns and qualifications of its members, the history of the provision in the Constitutional Convention, and the precedents in the Senate united in establishing that principle.

The Senate is not above the law and is neither authorized nor justified in ignoring its decisions in prior similar cases, much less the plain meaning of the Constitution and the history of any provision, under which it purports to act in judging an election in some subsequent case.

If bribery in the election of a Senator does not disqualify him, unless sufficient votes have been purchased to influence the election, and unless the Senator-elect had personal knowledge and was a participant in such bribery, it cannot be held that large expenditures in a primary, which is no part of the "election," disqualifies him.

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HON. GEORGE W. NORRIS—continued

reason or another had their right to sit in the Senate contested have, upon the presentation of the certificate of election, been sworn into the Senate and the question involved then submitted to a committee, and the final issue determined upon the report of this committee. But when thus determined it had reference to the beginning of the term and not to anything that had happened subsequent thereto, and the vote, when it finally came, was not a vote of expulsion but a vote as to the right that the Senator had at the beginning of his term to occupy his seat, and hence no question of a two-thirds vote was involved. The Senate in those cases took such a course because the only official notice it had of the election was the certificate of election presented to the Senate by the applicant.

In the case of Smith and Vare, the facts are different. The Senate already has official notice of what has happened both in Illinois and in Pennsylvania.

It is claimed by those who insist that these Senators should be seated that notwithstanding the expenditure of those large sums of money the people of these States, in the face of that evidence, elected them at the general election. This argument gives no consideration to the fact that under the system now prevailing a candidate must first be nominated before he can be elected. In a State like Pennsylvania, for instance, a nomination on the Republican ticket is equivalent to an election. The people have no choice except as between the nominees of political parties, and the partisan spirit runs so high that the elector, without any choice within his own party, votes his ticket straight.

It is claimed by Mr. Beck and others that this sum of $800,000 was spent and could well be spent in an educational campaign. It is not true that this money was used for educational purposes. The most of it, as shown by the evidence taken by the Senate committee, was in reality used to buy votes. It was in the main a campaign of deception, of vote buying and of machine control. The literature sent out was not in a fair sense of the term educational. There never was and never can be any legitimate reason given for the expenditure of this money.

The object of the expenditure was to get votes. If the political bosses want to educate the people or send them literature, they can do so when no campaign is on; but nobody has ever heard of their doing it.

As the Senate has truly said, the expenditure of such huge sums of money is "contrary to sound public policy, harmful to the honor and dignity of the Senate and dangerous to the perpetuity of free government.

Some official or somebody must have the right to pass on the disputed question of the admission of any claimant to a seat in the Senate. The fathers might have provided, if the question arose as to the right of a person to sit in the Senate, that it should be settled by the State legislature of the State from which he comes, or by the governor of that State. They have placed the responsibility upon the Senate itself, and whether it desires to do so or not, it cannot shirk this duty. It must meet it. It must decide it. It is the only tribunal provided for in the Constitution that has jurisdiction, and under that same instrument, this jurisdiction is final and from its decree there is no appeal. Inasmuch as the possibility of abuse would necessarily exist wherever the responsibility was placed, they thought it best to let the Senate settle its own difficulties and be the judge of the qualifications of its own members.—*Extracts, see 2, p. 322.*

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The system of nominations for candidacy at elections were known and practiced in many of the thirteen Colonies, both before and after the Declaration of Independence. A system of nomination by political parties of candidates for election of Senators by State legislatures was known and practiced when the Seventeenth Amendment was adopted, transferring such elections from the State legislatures to the electorate of the States. Both the Constitution, as it was originally drafted in 1787, and the subsequent Seventeenth Amendment are equally silent in the matter of nominations of United States Senators.

Moreover, it is a well-known fact that practically all State primary election laws exclude from participation in any primary of any political party such of the electorate as have not previously registered as members of that party. It is obvious that a nomination by any political party of a candidate is, in no sense of the term, an election, and confers on the nominees not even an inchoate status as United States Senator. This is true, even though nomination in some of the States, particularly in the South, is equivalent to an election.

The change effected by the Seventeenth Amendment from election by State legislatures to election by the voters of the States has not changed the principle stated in the Stephenson case. Nor has it in any manner shifted the exclusive duty of the State.

The reason for the lack of Federal control over State primaries is clear.

The people of the States are fully competent to regulate primaries or conventions for the nomination of candidates for election to office, including nominations for Senator. They are also competent to punish in their courts any violations of such regulations. There have been too many attempts to regulate from Washington the morals of the people.

If the Congress has not seen fit, under any power which it may have under the Seventeenth Amendment, to make a regulation in respect to primary contests, then the Senate has no power to expel a Senator-elect on the ground that he or his friends spent an excessive amount of money in the primary contests. If such a rule were established, either by specific actions by the Senate in the Pennsylvania or Illinois cases, or by a general and permanent rule of the Senate, as proposed by Senator La Follette, the Senate would, in fact, legislate the approval of the President, and it would superadd to the "qualifications" of Senators, as prescribed in the Constitution, a new qualification.

Assuming that power has been delegated by the Constitution to the Federal Government to regulate primary contests, such regulation must be passed by both the House of Representatives and the Senate and be approved by the President. If disapproved by the President, the proposed law has no efficacy, unless two-thirds of the House and the Senate pass the law over the President's veto. To permit the Senate, by a standing rule or specific resolution in the Pennsylvania and Illinois cases, to regulate primary contests by unseating any Senator-elect, who has failed to conform to the regulation, would be a clear usurpation of a power which the Senate can only enjoy in conjunction with the House of Representatives and the President.

It is true that, if such a precedent shall at this late day become part of the great unwritten law of our form of Government, then the rights of the States will no longer be the same as they were prior to this fatal wound.—*Extracts, see 8, p. 322.*

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ELIHU ROOT

U. S. Senator, N. Y., Republican, 1909-1915

THERE exists no power in any government short of an amendment to the Constitution of the United States to limit or control the evidence we* shall receive or the grounds upon which we shall act in judging the qualification and election of a member. The sole limit is imposed by our own sense of what is just and right and for the public weal. No strict rules of evidence control us, no statutes declaring what shall or shall not constitute a good election. We are not a board of canvassers counting votes; we are a body which Congress itself cannot control, protecting the integrity, the purity and the efficiency of this great representative body, in many respects the most powerful body under representative government in the world. We are charged with that duty, and our own consciences and sense of justice must determine the action we take in the performance of the duty.

It is an ungracious task to urge such considerations; it is a disagreeable duty for Senators to listen; but for many years the people of the United States have been growing in an uneasy conviction that seats in the Senate of the United States have been obtained by bribery, and that, owing to the difficulties of securing proof, the natural unwillingness of colleagues to believe ill of their fellows, owing to whatever cause it may be, attempts to bring home to a member charged, the consequences of what the people of the country have believed to be corrupt practices uniformly fail.

We may have a moral certainty, but we cannot vacate a seat in the Senate on a moral certainty. But when there is a moral certainty derived from a course of conduct and the character of men; when there is a moral certainty that there has been corruption, and there is also specific and direct evidence of the corruption, we are not at liberty to reject that evidence.

It is this belief that has reduced the honor paid to the Senate of the United States. It is this belief, sometimes based upon the mistaken observation of the people of the country whom we represent, that has been sapping the confidence of the people of the country in the Senate of the United States. This belief is one of the great considerations underlying choosing Senators of the United States. This belief is one of the great considerations which are warping our people away from their confidence in the representative Government established by our fathers. It is one of the things that is making them distrust the possibility of pure and honest representative government, and it is bringing about long strides toward a change in our system of government; it is carrying great sections of our country away from the old methods of the Constitution.

If we would preserve the Government of the fathers, if we would preserve the honor and integrity of the Senate, if we would do our full duty to our country under our oaths, we are not at liberty to reject the testimony in this† case, which shows this seat to be filled here as the result of corruption. Hard it is; but as we have fathers who have made sacrifices for our land, as we have children to whom we hope to hand down a government of peace and justice and liberty, it rests with the Senate of the United States to do its duty now; and, hard and unpleasant as it may be, purge itself of the results of this foul conspiracy against the integrity and purity of our Government.—*Extracts, see 9, p. 322.*

*Members of the Senate.

†The William Lorimer Case in the Senate, 1911. See p. 298.

Con—continued

RALPH H. CAMERON

U. S. Senator, Arizona, Republican, 1921-1927

IN this matter the pending question is one of procedure. It is more a question of right or wrong as a matter of common sense than a question of constitutional law too intricate for a layman to understand.

A sovereign State of the Union is entitled at all times to be represented in the legislative councils of the Federal Government. No one will question that proposition. That being so, its duly accredited representative presents his credentials from his State, all in proper form, and asks to be seated as the Senator from that State.

No one questions but that if he is seated, and the oath of office administered, the Senate still has the undoubted right to adjudge any question as to his qualifications that is within its power to determine, and, if the applicant be found disqualified, to declare the office vacant. Then, the State, if it desires the continuous representation in which it is entitled, may instantly name a successor. There is no denial to the State of its right to representation.

The dignity of the Senate demands that if any Senator designate is charged with any disqualifying conditions, he shall have his day in court. A hearing, to which he is beyond question entitled, will take time. Unless he is permitted to act for his State pending that investigation and decision, then to that extent and for that period of time the State is denied its right of representation.

The right of a sovereign State to its representation in the United States Senate is a right that cannot be set aside, even for a limited time, without a violation of the fundamental principles upon which the Federal Government is founded.

The Federal Government exists because certain powers have been delegated to it by the sovereign States of the Union. Those delegated powers are to be exercised through the Senate and the House of Representatives. The delegation of power by the States goes hand in hand with the right to representation in the legislative councils of the Federal Government. The first constitutional duty of the Senate of the United States at all times is to protect and uphold that sacred, sovereign right of every State of the Union. Any other procedure would lead to the grossest abuses.

There is no way to insure the State its basic right of representation at all times, except to seat a Senator designate on the presentation of proper credentials from his State, leaving all questions as to his qualifications to be thereafter determined by the Senate.

If the Senate, for good and sufficient reasons, decides that he does not possess the requisite qualifications, it may unseat him; and upon that action the right of the State to fill the vacancy arises instantly. There need be no hiatus or period of nonrepresentation, because, the Senate having created the vacancy, the State has the immediate right to fill it if it so desires.

It must be assumed, as to every question arising for its action or determination by the Senate, that the State has an interest in being represented on the floor of the Senate by its representative, with all right of debate and vote. The right of the State to representation is a continuous right, covering every moment of time during which the Senate is in existence as a law-making body; the right cannot be denied to it or taken from it for any period of time, however short, without jeopardizing its interests, and denying to the State its basic constitutional right of representation.—*Extracts, see 4, p. 322.*

Should Senator-Elect Smith Be Seated?

Pro

HON. HIRAM BINGHAM
U. S. Senator, Connecticut, Republican

IT is proposed to deny to Illinois, a sovereign State of the Union, the right to have the ambassador whom she sends here, take the oath and be received as an ambassador from that State, until such time as his qualifications may be further looked into, if there be question raised against them.

There can hardly be any charge against us that we are making any fight for Mr. Smith in order to preserve a Republican vote here. The question as stated is as to whether the Senate shall keep itself pure; whether it shall hold up a high moral standard and say to the States of the Union: "You cannot elect; you cannot send anybody here to us whom we do not consider fit to sit alongside of us." In other words, we hold ourselves to be an exclusive club, with a membership committee which decides on the qualifications—social, ethical, moral and otherwise—of those who desire to come into this body, a position absolutely contrary to that on which this Government was founded.

As superior Tories looked with scorn and contempt on those who championed the cause of the rascally thieves and rioters who threw the tea into Boston Harbor, so superior Senators who scorn to approve the choice of Illinois will look with contempt on those of us who place the constitutional right of the States above popular clamor, even when it means the seating of one who is said to be guilty of moral obliquity.

My object is solely to preserve representative government, to foster loyalty to its principles, and to maintain our form of government, which has been more successful than any other in history.

So much of our thought is national, the States are almost forgotten. So much of our legislation is national, we almost resent any reference to the notion that a State has the constitutional right to do something the Congress and the people at large may not like. Our Government is becoming so paternalistic, we give so much aid of one sort and another to the States, that we can not bear to think of them not doing as we want them to do and not electing to our number people that we are glad to receive here. Because we have been an indulgent parent, we want filial respect and obedience. We want to make the rules for the States' moral and ethical and legal guidance.

I have even heard a distinguished southern Senator say that "State rights were all shot out of him at Appomattox." It is true that the right to secede was denied by ordeal of battle. But I am one of those who believe, and I represent a State which still believes, in the Ninth and Tenth Amendments to the Constitution. We believe that they are necessary for the preservation of our form of government.

The Ninth Amendment to the Constitution says:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

And the Tenth Amendment says:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

The Constitution was so constructed as to prevent us from following the whims or political necessities of the moment. At the present time some members of the Democratic party appear to be desirous of maintaining the position that the Republican party condones malpractice, condones

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Con

HON. HENRY F. ASHURST
U. S. Senator, Arizona, Democrat

I OBJECT to the qualifying oath being administered to Frank L. Smith for the following reason:

During the course of his primary campaign and primary election, for the purpose of advancing his candidacy, Smith, knowingly allowed to be received by Allen F. Moore who, during the primary campaign and election was the chairman of his campaign committee and his manager, the sum of $125,000, contributed by Samuel Insull, which sum was with the knowledge and consent of Smith, expended during the primary campaign and primary election by Moore, and in addition to the sum of $125,000 Insull also expended with the knowledge and consent of Smith the further sum of $32,925 to promote Smith's candidacy.

In April, 1921, Smith became and remained during his primary campaign and primary election a member of and chairman of a regulatory body in Illinois known as the Illinois Commerce Commission, which has general jurisdiction of the rates and service of the public utilities in the State of Illinois, and jurisdiction of their financial structures and of certificates of convenience and necessity.

During the times above mentioned Insull was, according to his testimony, responsible for and was the manager of an investment in public utilities in Illinois approximating the sum of $650,000,000.

During the primary campaign and primary election the Illinois Commerce Commission, of which Smith was a member and was the chairman, had general jurisdiction of the rates and service of the Insull Public Utilities and Insull properties and of their financial structures and certificates of convenience and necessity.

In addition to the sum of $125,000, contributed by Insull to Smith's primary campaign and primary election, further sums of money, aggregating the sum of $128,000, were contributed by divers persons to Allen F. Moore, Smith's campaign manager, and were, with Smith's knowledge and consent, also expended to advance and promote his primary campaign and primary election.

At the time the sums of money were contributed, received and expended in Smith's primary campaign and primary election Moore and Insull all knew that the Senate of the United States on January 12, 1922, in the investigation of the primary election expenses of Truman H. Newberry, had adopted and agreed to a resolution which was as follows:

"That whether the amount expended in this primary was $195,000, as was fully reported or openly acknowledged, or whether there was some few thousand dollars in excess, the amount expended was in either case too large—much larger than ought to have been expended.

"The expenditure of such excessive sums in behalf of a candidate, either with or without his knowledge and consent, being contrary to sound public policy, harmful to the honor and dignity of the Senate, and dangerous to the perpetuity of a free government, such excessive expenditures are hereby severely condemned and disapproved."

Whether the Supreme Court of the United States in the case of Newberry vs United States (256 U. S. 232 et seq.) decided or did not decide that a penal statute when sought to be applied to a primary election in the State of Michigan was beyond the power or authority of Congress is not pertinent to the effort of Smith to be inducted into the Senate as a member, inasmuch as the Senate is not attempting to enforce

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HON. HIRAM BINGHAM—continued

corruption, condones evil practices in elections. These members of the Democratic party, turning their backs on the right of the States to send here anyone they desire, seek to make political capital out of the fact that Republicans are now asking to have sworn into the Senate a representative of the soverign State of Illinois who is said to have done something very recently that they did not like.

The States have the constitutional right to say who shall represent them here, except as they explicitly surrendered their rights in the Constitution. They agreed when they adopted the Constitution, first, that no Federal officeholder could be elected to the Senate of the United States, no nonresident of the State, no one under 30 years of age, and no one not a citizen for nine years. If any other qualifications were intended to be considered, why did they not add more important ones? But there is nothing about ex-criminals, nothing about morals or religion or health or even intelligence!

Are they not a group of essentials? The ones mentioned were not so essential—youth, non-residence, office holding. If minor qualifications could be overlooked, why put in 30 years? If major qualifications could be overlooked, why put in treason, which was not in the original Constitution but was adopted later as an amendment? My point is that the States have the right to send whom they please, if they do it in the right way and if we judge that the men they send meet the few qualifications which all the States have agreed in the Constitution are fundamentally necessary.

The Congress was given the right to pass laws regarding elections; but we have passed no laws regarding primaries as yet and very few regarding elections. In this case the charge that is made against Mr. Smith concerns a primary, but no court has decided that a law has been broken. We are treading on the delicate ground of personal opinion and public morality.

We are undermining the sound division of power which has preserved our citizenship. What if governments and citizens do make mistakes? Whose business is that? It is not ours. It is the business of the States and the people who live in them. Are the States mere children and we their parents, who lay down laws for their guidance in this matter?

It is true that we are the judge of the elections and of the qualifications. We judge of the elections, but we do not elect. We judge of the qualifications, but we do not make the qualifications; otherwise the United States which can never be denied their rights of representation become a farce.

Article V of the Constitution provides that "no State without its consent shall be deprived of its equal suffrage in the Senate," and that is the one amendment which can not be amended. Yet we have before us this proposal to prevent an ambassador from a State from taking his seat, thereby depriving that State of a vote in this body.

The question does affect most deeply our form of government. If we are to be an empire, as some people hope, then the Senate is responsible for the type of man it permits to sit in it. But if we are a Union of the States, then the States are responsible, and not the Senators who sit here. Deprive a State of its responsibility, and you make it merely a province of the empire of America.

It has not been our custom in the past to prevent a Senator from taking his seat, even when there was a very great doubt as to the legality of his election, and similarly there has been no hesitancy in depriving him of his seat, after he has sat here for months, when the facts have been investigated and

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HON. HENRY F. ASHURST—continued

a penal statute but is attempting to employ its Constitutional and inherent power and right to keep itself clean. The United States Senate has plenary power to protect the purity of the elections where its members are to be chosen by refusing membership in the Senate to whoever countenances and permits bribery, corruption or fraud, or who permits the expenditure of excessive sums of money to promote the candidacy of the person claiming membership in the Senate. The Senate is the sole judge of the elections, returns and qualifications of its own members, and the Senate has the power to exclude from its membership any person whose election or processes of whose election or appointment may be vitiated by fraud, corruption or by the expenditures of excessive sums of money.

What are the facts? I shall summarize them as briefly as possible. They are these. I read, first, from the Statutes of the State of Illinois, page 2677, which provide:

"No commissioner, assistant commissioner, secretary, or person appointed or employed by the commission shall solicit or accept any gift, gratuity, emolument or employment from any person or corporation subject to the supervision of the commission."

The penalty for the violation of that statute is removal from office, and the offender may also be punished for a misdemeanor.

I read now from the testimony (Chicago hearing, p. 1548) a brief statement made by the chairman of the Senate, special committee; Mr. Reed:

"This committee is not making any charges. This committee is proceeding under authority of a resolution of the Senate to ascertain the facts touching on the primary election, which is the initial step for a man finally receiving his seat in the Senate. It was the opinion of the Senate that it had the right to know all that any man did in order to gain a seat in the Senate, and if his hands were clean the Senate felt he would not object to telling us what had been done."

The Senate indeed has a right to know, from the inception of a man's candidacy for the Senate down to its conclusion, all the various and sundry steps he took to advance and promote his candidacy.

It is asserted that we are acting precipitately and without evidence. Let us explore and see. The Senate, on the 17th day of May, 1926, by a large vote, adopted a resolution authorizing and directing the appointment of a special committee to investigate the primary-election expenses of Frank L. Smith among others. The Vice-President made the appointment. The testimony was taken, was printed, and was laid upon the desks of Senators before the member designate presented himself to take the oath of office.

Does any Senator contend that the testimony was unfairly taken? Does any Senator challenge the accuracy or the authenticity of the testimony? Does any Senator doubt that the testimony shows the Senator designate violated the law of the State of Illinois when he accepted these campaign contributions from Mr. Samuel Insull, who, according to his own testimony, stated that he represented an investment of $650,000,000 in public utilities in Illinois subject to regulation by the commission of which Mr. Smith was a member and was chairman? Will any Senator say he does not believe that the member designate violated the law of Illinois?

Smith was a member of and chairman of the Illinois Commerce Commission, which body regulated all the Insull public utilities and had such charge and control of their financial structures that the commission could, under certain condi-

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Hon. Hiram Bingham—continued

decided by the Senate, as they were in the case of Senator Brookhart.

Those who are in favor of keeping Mr. Smith from taking the oath until after his case shall have been referred to the Committee on Privileges and Elections, reported upon and decided by the Senate, are asking us to establish an exceedingly dangerous precedent. As has been pointed out by others, it would make it possible for 33 Senators, ardent partisans, to prevent 32 Senators from taking their seats until their qualifications as to character, politics, intelligence, and so forth, had been passed on by the 33 who would be the majority at the end of the session of Congress. I do not say that it is likely, but I say we make it possible if we establish any such precedent deliberately.

There are not wanting evidences of a movement which would in the end deprive this body of its constitutional powers and reduce it to a mere echo of its former self. Many voices have been raised recently against the apparent unfairness of the Senators from one of the smallest States in the Union, so far as population is concerned, having the same voice as the Senators from a State which numbers fifty or one hundred times as much population. If you are going to listen to the voice of a majority of the people of the United States, you may have to make some provision whereby that part of the Constitution may be changed.

If you are going to listen to the clamor of the multitude, if you are going to take the opinion of the majority of the people of the United States rather than that of a majority of the people in any one State, you might as well get ready now to give up the constitutional powers vested in this body. The handwriting is already upon the wall. He who runs may read. Less than two years ago the House of Representatives took upon itself to pass a resolution in regard to the World Court, a matter which was then properly before the Senate and not before the House. It does not take a prophet to see that if the tendency toward centralization is allowed to proceed, the power will eventually be centralized in the body which represents the people of the United States rather than the States of the United States, and the constitutional powers of this body will be reduced to a minimum.

We are now attempting to say that a State can only elect a Senator by and with the consent of the Senate. That is the question. Today we in the Senate have that power with regard to Presidential appointments; but only yesterday in the House of Representatives the qualifications of a recent appointee were called in question and strenuously debated. It does not require any great stretch of the imagination to foresee a time when the House of Representatives, representing the majority of the people in the United States, may refuse to appropriate any money for the salary of an appointee of whom it does not approve. Nothing can compel it to do so. If the Senate is to assume the power of saying to Illinois, "You cannot act under the provisions of the Seventeenth Amendment except by and with the consent of the Senate," what is to prevent the House of Representatives from saying to the Senate, "You cannot act under the provisions of Article II, Section 2," where the advice and consent of the Senate is required for the making of treaties and for the appointment of ambassadors, judges, and other officers of the United States, "unless you first secure the advice and consent of the House of Representatives?"

There is no question that the House of Representatives is far more popular in the country today than is the Senate of the United States. Our rules have been held up to scorn

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Hon. Henry F. Ashurst—continued

tions, within a two-month period double their values or bankrupt them all. The statute of Illinois was a wise statute. It was enacted to protect the people of Illinois.

It is contended that there is no evidence that Mr. Smith was or could have been influenced by this huge contribution made by Mr. Insull. That is not to the point.

This is the gravamen of this case. The statute of Illinois denounces gifts, bounties and contributions made to a member of the commerce commission. Mr. Smith states under his own oath that he knew of these contributions. His manager states that he knew of them. He does say that he was surprised at them; but how proud would be his position today if he had said: "No; these contributions must be returned. They are against the law of Illinois." But they were accepted and they were used, with Mr. Smith's knowledge and consent.

I shall not say anything at length regarding Mr. Insull—he is not here to defend himself—but, after having contributed $125,000 to the campaign expenses of Mr. Smith, the Republican candidate, he went over and contributed $15,000 to promote the campaign of Mr. Brennan, Mr. Smith's Democratic opponent. In other words, it was Mr. Insull's intention to land on his feet, and in an upright position, and in a friendly port, no matter what happened.

I do not arraign Mr. Brennan, because Mr. Brennan, as was well said during the campaign, was not a member of the Illinois Commerce Commission. He had no power to regulate Insull. It was purely a matter of taste for Mr. Brennan to accept or reject the contribution. It was not unusually large as such contributions go. It does not necessarily convict Mr. Brennan of moral turpitude. But in what position does it place Mr. Insull?

The testimony is printed and is here, it is available and if the case were sent to another committee, if a re-examination were had, I assume the same witnesses would testify in the same way, to the same points, and the result would be the same. It would be an unnecessary procedure to traverse the ground we have already traversed. It would convict the Senate of practicing an asinine procedure. It would convict the Senate of futility. We sent out our committee at an expense of $50,000 or $75,000, we occupied the time and attention for months of five of our able members, and shall we now say, "We meant nothing by that; it was only a gesture?"

No. The testimony here overthrows the prima facie, which is the certificate. Were the testimony not here, every Senator upon his oath would be obliged to seat Mr. Smith. I repeat, every Senator on his oath would have to seat Mr. Smith were it not for his testimony, taken, not ex parte, not in affidavit form hastily drawn from a breast pocket, but taken by an arm of the Senate, at the command of the Senate, at the authority of the Senate.

After years of investigation the Senate came to the resolution (quoted above) regarding the Newberry case. That was a solemn notice to the world that although Mr. Newberry would be permitted to take his seat, the Senate would not hereafter seat anyone who directly or indirectly spent, or caused to be spent, or allowed to be spent, such a sum as $195,000 to procure a seat in the Senate.

But it is said that the Supreme Court of the United States struck down the law, which denounced excessive expenditures in a primary election. It did not do so. This is how I interpret the decision of the Supreme Court of the United States in the Newberry case, I found (in 256 United States, 232,

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Should Senator-Elect Vare Be Seated?

Pro

HON. WILLIAM H. KING
U. S. Senator, Utah, Democrat

IMPORTANT constitutional questions are involved in the assertion of the power of the Senate to exclude a member-elect who has been duly certified as such by a State. These questions vitally affect our dual system of Government. To deny the right of a State to select its representatives in the Senate would be a fatal impairment of the rights of a soverign State, and would, therefore, affect our real form of Government. Senators are all sworn to maintain the Constitution, and a failure to do so would in effect be a betrayal of our Constitution. Every Senator should endeavor to the utmost to uphold the Democratic traditional policies of home rule, and should oppose any doctrine which would be fatally subversive of the rights of a State.

Senators elected cannot be excluded on flimsy grounds, and precedents of this character would indeed be unwise, for few seats would be free from attack, and each State should be allowed to adopt its own method of electing its Senators and without outside interference. The election contests in Pennsylvania as well as the senatorial situation in Illinois will undoubtedly early engage the attention of the Senate. And whether the Reed committeee, or some other special committee or the committee on privileges and elections takes cognizance of these cases, it is certain that they will be passed upon fairly without partisanship or prejudice, and with due regard to the rights of the individuals concerned as well as the rights of the sovereign States involved.

During the hearings before the Reed committee in the Vare case it was apparent that there was a serious contest on within the Republican organization and that the State candidates as well as county officials and members of the various county central committees were also to be chosen, so that the primary election was not alone for the senatorial candidates and in the hearing no evidence was offered that in any sense reflected upon the personal integrity of Mr. Vare, and his individual contributions were expended almost entirely in sending out circulars to the voters within his State.—*Extracts, see 16, p. 322.*

HARRY A. MACKEY
Campaign Manager, Vare-Beidleman Ticket

THE best answer to the assertion that money obtained the nomination is the fact that Senator Pepper was defeated, although his campaign cost three times as much as the campaign of Mr. Vare. As an illuminating example, the Pepper expenditures in Philadelphia were two and one-half times that of the Vare ticket expenditures, while the Vare vote in Philadelphia was nearly three times that of the Pepper vote.

The Pennsylvania primary law, passed 20 years ago, legalizes the employment of watchers, and for 20 years it has been the custom for all candidates and all parties to employ them and to pay them. The assertion that the votes of these watchers were thus purchased was made by only one person, a Pinchot partisan, is an insult to the men and women who acted as watchers, and is utterly absurd.

Every dollar paid out in behalf of Mr. Vare was for a legitimate purpose and was accounted for in the proper way. Casn contributions were made to county organizations to prevent our opponents from knowledge of our movements

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Con

HON. GEORGE W. NORRIS
U. S. Senator, Nebraska, Republican

ARE we going to place party above country? Are we party men first and patriots afterwards? You would not stand for such conduct anywhere else. Why should we think for a moment of standing for it in the party in governmental affairs, where the interests of all the people are involved, where the rights and the liberties of children yet unborn are placed in our care? Are we going to wink at corruption in our National Government, and in the next breath revere the memory of Washington and Franklin and Lincoln?

It seems to me to be an impossibility for the Senate to seat Mr. Vare. If the Senate was in earnest then, if it stated the truth in that resolution, it can not now seat Mr. Vare. And let me call your attention to the fact that the whole country is alive to this situation. In every senatorial contest demands are being made for candidates for that high office to state their position on the Pennsylvania situation.

They are asked, before election, to tell the people whether, if elected, they will vote to seat Mr. Vare; and in every contest so far as I have heard, while there have been some candidates who have thus far avoided the question and have not answered it, there has never been one who has dared to proclaim that he would vote for the seating of Mr. Vare. And when we take into consideration that nearly every Senator who voted to seat Mr. Newberry, even though less than $200,000 was spent in his behalf, has himself been defeated at the polls when a candidate for reelection, it will open our eyes to the fact that Senators will hesitate long before they will seat a man where millions have been spent in the primary where he was nominated.

So far as I have heard, every man who is a candidate now before the people of his State for United States Senator, who has declared himself on the subject, has pledged his people that he will vote against seating Mr. Vare. This applies to candidates of all parties. And if there is a doubt about the seating of Newberry, how can there be one doubt remaining about the seating of Mr. Vare? According to the record, those behind Newberry were pikers and tightwads as compared to the Pennsylvania machine that nominated Mr. Vare.

The great majority of our people are patriotic and honest. They want the best possible government we can get. They want men in office with courage. They want men to legislate for them who are independent of outside control. They want to keep the Senate of the United States pure and above criticism. It is perhaps the greatest legislative assembly of the world. Its membership represents more than 100,000,000 of free people, the mass of whom are anxious to increase the happiness of all our citizens; to place our Government before the world as a model of honesty, of integrity, and of human liberty.

To insure this the members of the Senate must be elected by an intelligent, a patriotic, a liberty-loving, and an uncoerced citizenship. If the seats there are sold for cash, if special interests are able to control the votes of its members by political manipulation behind the scenes, then our national doom is sealed. Every dollar spent by the political machine for the election of a United States Senator is only an investment. It must all be repaid with interest. As a matter of fact, it is not only repaid with interest, but the principal

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Can the Senate Investigate the Primaries?

Pro

HON. JAMES A. REED

U. S. Senator, Missouri, Democrat

THE Supreme Court declared that a penal statute, when sought to be applied to a primary election in Michigan, was beyond the authority of Congress. But the Supreme Court did not say and the Supreme Court never will say that the Senate has not the right to protect the purity of the elections of its members; that it does not have the right to say who shall sit and who shall not sit in the United States Senate; that the Senate is not the sole judge of the qualifications of its members. If that is true, then the Senate has the right to know the methods by which a man asking to be here seated was nominated.

The ignorant man attends a great American assize. He beholds the people summoned to the ballot box to express their untrammeled will. He sees issuing forth the bribe giver, the corruptionist, buying the souls of the citizens, bribing them to yield a privilege that was purchased by the lives of countless millions of men. For the struggle for human liberty was not begun with the War of the American Revolution. That liberty might be gained, men have contended and struggled in every age of time. Armies have marched and counter-marched across the face of the world until its plains were white with skeletons and all its soil was sodden with the blood of men. To gain the boon of liberty for us, to establish here a free government, our fathers rallied to the standard of revolution. Through the miasma of swamps, through forests, beneath the burning sun, amid the winter's snows, in starvation and despair, they fought on and on, until at last they established the right of self-government. And that right is all concentrated in the simple right to cast a freeman's ballot.

He who will lay unholy hands upon that blood-baptized privilege is worse than an anarchist; he is the vilest of traitors; he does not merely betray, he destroys his country, for he poisons its soul.

The Senate should endeavor to protect itself against the men who employ vast sums of money to corrupt the electorate of any State or of all States.—*Extracts, see 1, p. 322.*

PERRY BELMONT

U. S. Representative, N. Y., Democrat, 1881-1889

THE decision in the Newberry case was rendered before the adoption of the Seventeenth Amendment providing for the popular election of Senators. Undoubtedly a fundamental change was thereby brought about. We have now a senatorial delegation of two Senators elected from each State in the same manner as the Congressional delegations, varying in numbers according to population.

The field is therefore open to devise a method which would prevent serious injury to our political system if primary elections shall remain, so far as Federal legislation is concerned, subject to the influences of vast secret expenditures. Already publication of contributions and expenditures are not made in most of the Congressional primary elections. The primaries are, therefore, rapidly becoming the actual elections themselves. A State such as Illinois, for instance, not possessing a State publicity law, would become the battlefield of secret expenditures. The financial powers that are known to engage in political contests would concentrate their forces where they would be at liberty to

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Con

HON. DAVID A. REED

U. S. Senator, Pennsylvania, Republican

I THINK the Senate spends too much time chasing down newspaper rumors. The Senators will remember that we almost made ourselves unable to transact the regular business of the Senate because we were busily engaged running down this rumor or that rumor and appointing special investigating committees. The Constitution binds us as firmly as any other branch of the Government. The Supreme Court in the Newberry case distinctly said that we have no business to legislate on the subject of primary elections. If we have no business to legislate respecting primary elections, we certainly have no business to investigate them.—*Extracts, see 1, p. 322.*

JAMES M. BECK

Former Solicitor-General of the United States

IT is a significant fact that, although the Newberry decision was rendered on May 2, 1921, and a doubt was expressed by one Justice (McKenna) as to the possible existence of a legislative power to regulate primary contests under the Seventeenth Amendment, Congress has not passed any such law and, in the absence of any such law, it must be assumed that Congress preferred to observe the historic policy of the nation, which is to leave such questions to the exclusive regulation of the States.

The only interference by the Constitution with State control over elections was in the provisions above cited, that Congress could, if it saw proper, overrule the action of the State as to the "times, places and manner of holding elections." To prevent any discrimination between the right to vote when exercised for the election of Federal officers, it was provided that the qualifications of electors in each State, in the matter of Federal officers, should be the same as the qualifications of electors in such State when they were electing the members of the more numerous branch of the State Legislature.

Further than that the Constitution did not seek to go. It felt that each State could wisely determine whether the right to vote should be liberally extended or narrowly restricted. While the framers of the Constitution probably never conceived as a possibility the extension of the right to negroes, yet, if that possibility ever occurred to them, they presumably believed that each State could determine to better advantages what its own local conditions would justify in promoting the great objective of "the common welfare."

Whatever may be said as to this question of constitutional power over elections, there can be no question as to the continuing policy of our Government since the formation of the Constitution. With the exception of a few periods when party passion ran high, and with the exception of the two great crises in our national life which gave rise to the Fifteenth and the Nineteenth Amendments, the National Government, almost continuously throughout our history, has adopted the wise policy of leaving these matters to the States.

There is a clear distinction between the machinery of "elections" from the registration of the voter and the final casting of the ballot, over which Congress has undoubtedly this supervisory power, and the collateral and ancillary activ-

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Did Reed Committee Expire With 69th Congress?

Pro

HON. S. D. FESS
U. S. Senator, Ohio, Republican

HERETOFORE select committees of either Senate or House created for service during a Congress have ceased to exist at the conclusion of the Congress. As has been the custom in like circumstances, Senator Reed of Missouri on February 21, 1927, introduced S. Res. 364 to continue the force of the investigating committee during the interim between the 69th Congress and the 70th Congress and thereafter until the 30th of December, 1927. The resolution was considered on the floor and ordered to the calendar, but did not reach a vote.

As a member of the committee to audit and control the contingent expenses of the Senate, I have taken the position that there is no authority for that committee to approve expenditures of the special investigating committee. Whether the committee now exists is a matter of different opinion to be settled finally by the Supreme Court. It would be inconsistent for me to accept service as a member of this committee. I have withheld approval of vouchers at a time when I have felt the committee had no authority.—*Extracts, see 11, p. 322.*

HON. DAVID A. REED
U. S. Senator, Pennsylvania, Republican

THE special committee of the Senate which has been investigating the campaign funds of the Republican Senators has, in my judgment, no authority whatever at the present time. Eloquent arguments have been offered to demonstrate that the Senate has power to continue such committees through the recess. No one has doubted the existence of this power by the Senate. The plain fact is that the Senate has not exercised its power to continue this particular committee.

The recent decision of the United States Supreme Court in the Daugherty case did not decide that the committee continued in power after the expiration of the Congress, but merely decided that the Senate as a continuing body had power to continue its committees through a recess when it saw fit to do so. The Court said: "So far as we are advised, the select committee having this investigation in charge has neither made a final report nor been discharged; nor has it been continued by an affirmative order. Apparently its activities have been suspended pending the decision in this case. But be that as it may, it is certain that the committee may be continued or revived. Now, by motion to that effect, and if continued or revived, it will have its original powers."

Apparently this language was not called to the attention of the Vice-President. The Senate has 33 standing committees and it has ordained that these committees shall continue with full power throughout all adjournments. If this special investigating committee were considered also to be a standing committee, the rules of the Senate become meaningless. It has been the practice of the Senate throughout its existence to regard these special committees as dying with the Congress in which they were appointed, unless the Senate shall affirmatively provide otherwise.

If this is not the rule, then hundreds of special committees appointed in the past are still in existence and our Vice-Presidents have been remiss in not keeping their membership filled. This, in my judgment, illustrates the unsoundness of the contention now made by those who like to see this com-

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Con

HON. CHARLES G. DAWES
Vice-President of the United States
President of the United States Senate

IN connection with the matter of resignation of Senator Goff from the Senatorial investigating committees, appointed under the Senate resolution 195 of the 69th Congress, and the appointment by me of a successor to him on the committee, legal arguments pro and con have been submitted to me involving the question as to whether this committee is still in possession of the powers which it had before the adjournment of Congress.

In my judgment the Supreme Court of the United States in the case of John J. McGrain, deputy sergeant-at-arms of the United States Senate, against Mal Daugherty, rendered January 17, 1927, conclusively disposes of the quest in the affirmative. The Supreme Court held that the language of the resolutions extended power of the committee beyond the Congress which passes the creating resolution. Senatorial resolution 195 of the 69th Congress contains the following language: "Said committe is hereby empowered to sit and act at such time or times and at such place or places as it may deem necessary." The holding of the Supreme Court in the Daugherty case is clearly applicable. The language of the Supreme Court in this case was as follows: "The investigation was ordered and the committee appointed during the 68th Congress. The Congress expired March 4, 1925. The resolutions ordering the investigation in terms limited the committee's authority to the period of the 68th Congress, but this apparently was changed by a later amendatory resolution and then authorizing the committee to sit at such times and places as it might deem advisable or necessary." It is said in Jefferson's manual: "Neither house can continue any portion of itself in any parliamentary function beyond the end of the session without the consent of the other two branches. When done, it is by a bill constituting them commissioners for that particular purpose. But the concept shows that the reference is to the two houses of Parliament when adjourned by prorogation or dissolution by the King. The rule may be the same with the House of Representatives, whose members are all elected for the priod of a single Congress, but it cannot well be the same with the Senate which is a continuing body, whose members are elected for a term of six years, and so divided into classes that the seats of one-third only become vacant at the end of each Congress.

In view of the above, I have appointed Senator S. D. Fess* of Ohio on said committee in place of Senator Guy D. Goff, resigned.—*Extracts, see 11, p. 322.*

HON. WILLIAM E. BORAH
United States Senator, Idaho, Republican

AS I understand, this committee has never made any final report. It has never been discharged. This is a Senate resolution, and the Senate is a continuing body. The question is whether the committee may not go ahead and complete its work. Its authority not being recalled, it not being discharged, having made no final report, under what theory, since the decision of the Supreme Court, does this committee expire?

As I understand the decision in the Mal Daugherty case,

*See Calendar, p. 302.

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Pro—continued

HON. HIRAM BINGHAM—continued from p. 312

and derision by no less a person than the Vice-President of the United States, and he has been applauded by hundreds of thousands of admiring people. Are we, then, to give up our powers because the whim of the moment demands it? Are we to surrender our constitutional rights because a majority of the people in the United States desire to have them surrendered? We can scarcely present a reason against so doing if we deliberately deprive a sovereign State of the United States of its constitutional powers because a majority of the people of the United States do not happen to like the character or the deed of the man whom one State has sent.

No, let us pause and consider before we establish any such dangerous and revolutionary precedent as we are asked deliberately to establish in this case. We have courage enough to face that public opinion which at the behest of the Vice-President is urging us to change our rules. We have courage enough to face that public opinion which demands that the smaller States shall not be able to vote with larger States having 50 times their population. Let us, then, have courage to face that public opinion which, failing to understand the importance of the delicate structure of our Government, constructed by the framers of the Constitution, is urging us to refuse to receive a representative of a sovereign State because it is believed that he has done something contrary to high public morality, or because, under a mistaken idea of the real meaning of representative Government, we are asked to base our vote, as the Senator from Alabama said, on the question of whether we are "in favor of keeping this body clean and free from corruption."

Let us not be led astray or confused by popular clamor. Let us not be affected by the fear that some one in the future may accuse us of favoring "debauching the voter and corrupting the ballot box." Those arguments are entirely out of place in this assembly of those who have been selected by the sovereign States to represent them in this body, where the Constitution guarantees them two votes until such time as they may voluntarily surrender their right to equal representation. The Constitution has made us responsible for seeing that the elections are fairly held, but the Constitution has not made us a judge of the character or intelligence or morality of those whom the people of the sovereign States choose to send here. Such a construction would have been immediately refuted by the States when they adopted the Constitution.—*Extracts, see 4 and 5, p. 322.*

HARRY A. MACKEY—continued from p. 313

prior to the primary, which they could have obtained had the transactions been by check, as will be subsequently demonstrated. The proof that these transactions were honest is furnished by the fact that they were reported under oath at Harrisburg under the Pennsylvania law, had been entered in the books of the Treasurer of the Vare-Beidleman-James-Woodward Committee and were exhibited before the investigating Committee at Washington.

In the May primary the best men and women of Pennsylvania were enlisted behind one candidate or the other, the fight was openly conducted and assertions that the nomination was a matter of barter cannot be sustained by the slightest scintilla of evidence.—*Extracts, see 17, p. 322.*

Con—continued

HON. HENRY F. ASHURST—continued from p. 312

et seq.) that four of the judges held the statute to be invalid, four held it to be valid, and one judge expressed no opinion. But that is not the question here. The Senate is not attempting to enforce a penal statute such as was attempted to be enforced in the proper court in the Newberry case. The Supreme Court of the United States never has decided and, in my judgment, never will decide that the Senate is powerless to set up its own rule as to how much money it will permit a candidate for a seat in that body to spend.

The Supreme Court of the United States never will decide that the Senate cannot keep itself clean. The Senate of the United States has plenary power to deny a seat in this body if such seat has been procured directly or indirectly by fraud, bribery, or the expenditure of excessive sums of money. Now, as to what is an excessive sum of money, Senators honestly differ, because there is a zone so wide, a penumbra so broad, that unanimity of opinion thereon would be impossible.

But whatever sum of money we may conclude may be necessary to be spent in Pennsylvania or in Illinois or Wyoming or Nevada, the Senate has expressed itself as to the maximum sum. The guidepost set up by the Newberry case is not a license and a command for a Senator to go out and spend $195,000. It simply says the expenditure of such a sum is contrary to public policy. The law of the State, the dictates of conscience and of good taste, should be the controlling element as to how much money may be spent.

Moreover, we have a further expression of the Senate here. The Senate went on record, so far as it could, and enacted a law which denounces the expenditure of a higher sum than $10,000 in procuring one's seat in the Senate. That probably is the most important and most illuminating light we have as to the Senate's judgment as to how much it is necessary to spend.

When testimony is laid upon the desks of Senators, testimony taken at the command of the Senate, at the expense of the country, the prima facie is overthrown, as it is in this case, and the Senate has a right, in view of the testimony taken by the Senate, to say that the member designate should step aside and be denied the oath of office until the Committee on Privileges and Elections shall go into the matter further. If the Senator designate or any Senator were to say that more testimony is necessary or that some of this testimony was false and that the Senator designate had no opportunity to controvert it, or that the testimony was improperly taken, was illegally taken or that the Senate had no authority to take it, that might be an argument which would address itself to the conscience and judgment of every Senator. But there is no pretension of a showing here that the testimony was unfairly taken, illegally taken or that any advantage was practiced.—*Extracts, see 5, p. 322.*

HON. GEORGE W. NORRIS—continued from p. 313

is repaid many times, and this payment must come through some form or other of tribute from the average citizen.

The good people of the State of Pennsylvania ought to appeal from the principles and the methods of the corrupt machine to the theories and the doctrines of Penn and Franklin and Gallatin; that the noble traditions of Pennsylvania, deep rooted in her historic soil and planted in the hearts of her people, will be proclaimed to the Nation as the real standards of this State, safe and untarnished from the national disgrace of a political machine which is not only corrupt but happy and contented in its corruption.—*Extracts, see 3, p. 322.*

Pro—continued

PERRY BELMONT—continued from p. 314

employ them under the protection of secrecy.

It is the opinion of competent authorities that the Newberry case settled the law for that particular case only. The whole question as to the power of Congress to legislate with reference to primaries held subsequent to the 17th Amendment is still open, inasmuch as the Justices stood apparently four to four on the question of a primary held after that amendment.

Justice McKenna stated that his opinion was confined to a case which arose under the 17th Amendment, and he intimated that no deductions of any kind were to be drawn as to what his opinion would be relating to a case arising after the 17th Amendment. That is, he practically stated that he would not be bound one way or the other by his opinion in the Newberry case, as to cases after the 17th Amendment.

The danger is recognized, of course, of having the Federal Government go too far in exercising supervision with regard to the selection of those officials who are elected from the States to operate the machinery of the Federal Government. At the same time, it must be recognized that there is a broader interest than that which is limited to the district or to the State from which the official comes. These officials constitute the agency through which the Federal Government acts.

There seems to be no question as to power to compel publicity of campaign expenditures which take place in connection with what is known as the "general" or Congressional election. If the principle of control recognized with reference to general elections is sound, that same power, and the same principle, bring the primary election under the same control. It is not the number of steps taken in the selection of public officials which determines the operation of the constitutional power to regulate the processes by which that selection is effected, but it is the practical and actual result which determines the application or non-application of the power.

A constitutional power operative upon the entire process by which a given result was obtained at the time the Constitution was adopted cannot be nullified by a change of the process by which that result is effected now. When the Constitution was adopted, primary elections had not come into operation. Aside from conferences of small groups who suggested the names of candidates, the method of selection of public officials was the general election. The election was effected then by the one balloting.

The result was obtained then by only one step taken under the law. Now there are two steps, the primary and the general election. The first step, the primary election, is the one which more definitely determines who is to be selected. The primary constitutes, therefore, in effect, either a part of the election, or the election itself. This fact is recognized by State legislatures. The primary elections have been placed as completely under the control of the police powers of the States as have the general elections.

The Federal Constitutional power to deal with the publicity of campaign expenditures, therefore, cannot properly be held to be limited merely to the method of the election which obtained at the time of the adoption of the Constitution. That power was made operative not upon a process merely. Constitutional powers operate upon the things which processes effectuate. Whatever the form, whatever the process, resorted to, to which it is necessary for the candidate to submit, are parts of the election.—*Extracts, see 10, p. 322.*

Con—continued

JAMES M. BECK—continued from p. 314

ities of citizens in selecting their candidates and in conducting their political campaigns.

To argue that the Federal Government has either an express or implied power to regulate all activities of the citizen which have any relation to elections is to assert that the Federal Government could substantially destroy the political activities of the citizens. Thus it could regulate the character of political campaigns and the machinery of party Government, and this would be a most dangerous extension of Federal power, of which no man could see the end.

The conduct of political campaigns and, incidentally, the conduct of primary elections is a matter beyond the delegated power of the Federal Government, and this conclusion accords with the intentions of those who framed the great charter of our Government.

The pertinency of this discussion to the current controversy, which has grown out of the Pennsylvania and Illinois primary elections, is obvious. If the Federal Government has no power to legislate with reference to the primaries in Pennsylvania and Illinois, then it is equally without power to reject the deliberate choice of those States by reason of any alleged irregularities in such primaries.

To nullify the action of these sovereign States, by reason of the actions of irresponsible individuals over which the Federal Government has no supervisory power, would, in effect, be a coup d'etat which would radically change our form of Government and lead to deplorable and incalculable consequences.

The Fifteenth Amendment, following the Civil War, prevented the states from discriminating against any citizen by reason of his color, and the Nineteenth Amendment, following the World War, made a similar provision with respect to sex.

Excepting these two departures from the original plan, it still remains as a fundamental feature of our political institutions that the Federal Government shall leave to the States in all other respects the right to control elections, saving only the supervisory power of Congress to modify such local regulations by a national law in respect to the "times, places and manner of holding elections for Senators and Representatives." It is important to note that neither this clause, nor the prohibition of discrimination in regard to color or sex in elections, attempted to interfere with nominations of candidates for election.

Even this restricted and purely supervisory power over elections was regarded with distrust by the generation that framed the Constitution. Their jealous love of home rule, and their distrust of the power of a central government to control them in the time, places and manner of elections, led many of them to object to the new Constitution on the ground that too much power was given to the central government. Thereupon the proponents of the Constitution, in the great struggle for ratification, explained that the Constitution did not contemplate any vexatious interference with the reserved rights of the States in the matter of their elections, much less an attempt to dictate their choice of representatives in Congress.

Where would be the limit of power in the Federal Government to regulate the election of federal officers? However, it is useless to discuss a matter upon which the final arbiter, the Supreme Court, has authoritatively spoken.—*Extracts, see 8, p. 322.*

The White House

EDITOR'S NOTE: This department of THE CONGRESSIONAL DIGEST reports each month the outstanding public matters which have had the attention of the President during the preceding month. Such public matters will include appointments made by the President, addresses delivered by the President, executive orders, and proclamations issued by the President, etc. In the January, 1924, number of THE CONGRESSIONAL DIGEST, the Hon. Wm. Tyler Page, Clerk of the House of Representatives, U. S. Congress, fully described the position of the Executive under the Constitution. The July-August, 1924, number of THE CONGRESSIONAL DIGEST was devoted to a detailed account of the early and present system of election of the President, together with an article on the Powers and Duties of the President under the Constitution.

The President's Calendar

For the Period September 21 to October 24, 1927

Addresses

October 3—Address of President Coolidge at the Annual Meeting of the American Red Cross at Washington, D. C.

October 4—Address of President Coolidge at the opening meeting of the International Radio-Telegraph Conference at Washington, D. C.

October 13—Address of President Coolidge at the annual observance of Founder's Day at Carnegie Institute at Pittsburgh, Pa.

Appointments

September 22—Clarence M. Charest of Maryland to be general counsel, Bureau of Internal Revenue.

October 3—Theodore L. Cogswell of the District of Columbia to be Register of Wills, District of Columbia.

October 4—Brig. Gen. Richmond P. Davis, U. S. A., to be Major General.

October 4—Col. Walter C. Short, U. S. A., to be Brigadier General.

October 6—Louis J. Howe, to be collector of Internal Revenue for the First District of Ohio.

October 7—Leonard E. Wales, to be United States Attorney for the District of Delaware.

October 12—Addison E. Southard of Kentucky, to be Minister Resident and Consul General to Abyssinia.

October 12—Bessie Parker Bruggeman of Missouri, to be a member of the United States Employes' Compensation Commission (Reappointment).

October 13—Brig. Gen. Edwin B. Winans, U. S. A., to be Major General.

October 13—Col. Frank B. Cochew, U. S. A., to be Brigadier General.

Executive Orders

September 22—An executive order making Lancaster, Minn., a port of entry in customs collection District No. 34 (South Dakota).

September 23—An executive order excluding from the Tongass National Forest a tract of land on Prince of Wales Island, in Alaska, and restoring it to entry under the public land laws.

September 27—An executive order modifying the boundaries of the Colville National Forest, Washington.

September 27—An executive order withdrawing certain public lands in Washington pending resurvey.

September 29—An executive order fixing allowance for subsistence for enlisted men who are not furnished quarters or rations in kind; applicable to the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey and Public Health Service.

September 29—An executive order fixing a speed limit on vehicles operating on the Panama Canal Zone of 18 miles per hour in towns and villages and 25 miles an hour outside towns and villages.

September 30—An executive order abolishing as ports of entry in customs collection District No. 38 (Michigan) the following cities: Alpena, Charlevoi, Detour, Escanaba, Houghton, Mackinaw, Manistee, Marine City, Marquette, Muskegon, St. Clair and St. Joseph.

September 30—An executive order placing under the classified service all positions of laborer in first and second class offices except those persons engaged as cleaners.

September 30—An executive order temporarily withdrawing certain public lands in Utah.

September 30—An executive order reopening for settlement certain public lands in Wyoming and holding them for exclusive entry by ex-service men of the war with Germany for the first 91 days.

October 1—An executive order reopening for settlement certain public lands in Arizona and holding for exclusive entry by ex-service men of the war with Germany for the first 91 days.

October 3—An executive order reopening Maple Island, in the Mississippi River, in Illinois, to public entry and holding it for exclusive entry by ex-service men of the war with Germany for the first 91 days.

October 5—An executive order transferring a portion of the military reservation at Fort Barrancas, Fla., from the War Department to the Department of Commerce for use as a lighthouse station.

October 5—An executive order revoking Executive Order No. 4042, July 2, 1924, withdrawing certain public lands in Nevada for resurvey.

October 5—An executive order retaining as part of the Tongass National Forest certain public lands in Alaska.

October 8—An executive order creating a port of entry at Oklahoma City, Okla., as part of customs collection District No. 45 (St. Louis, Mo.).

Proclamations

October 14—A proclamation adding certain public lands to the Stanislaus National Forest, California.

October 14—A proclamation of the Convention between the United States and Mexico for the extension of the duration of the Commission for the settlement and amicable adjustment of certain claims.

October 17—A proclamation establishing the Ocala National Forest, Florida.

October 20—An executive order adding Tananrive, Madagascar, to the list of tropical countries in which one year is counted as a year and a half service for purposes of retirement in the Foreign Service.

October 21—An executive order revoking executive order of April 30, 1924, withdrawing from entry certain public lands in Colorado.

October 22—An executive order withdrawing certain public lands in Utah pending resurvey.

October 24—An executive order withdrawing for townsite purposes certain public lands in Alaska.

The Supreme Court of the United States

EDITOR'S NOTE: This department of THE CONGRESSIONAL DIGEST began with Vol. 3, No. 1, and is devoted to a brief non-technical review of current decisions of the U. S. Supreme Court which are of general public interest. The June, 1923, number of THE CONGRESSIONAL DIGEST printed the provisions of the Constitution of the United States upon which the Judicial Branch of our Federal Government rests. This number contained an account of the U. S. Supreme Court and the system of inferior federal courts, the relation of the Judicial Branch to the Legislative and Executive Branches of the Federal Government, and the relation between the Federal Judiciary and the States. The U. S. Supreme Court, its present procedure and work, were also described.

The Beginning of the October, 1927, Term

THE October, 1927, term of the Supreme Court opened on October 3, with Chief Justice Taft, and Associate Justices Holmes, Van Devanter, McReynolds, Brandeis, Butler, Sanford, and Stone, sitting, with Mr. Justice Sutherland absent.

On October 10 (Monday being decision day) the Court delivered the first opinions of the term. Among them was the Sinclair Oil Company case given below.

On October 17 the Court disposed of 70 writs, orders and motions and delivered 7 Per Curiam decisions, without opinions. Announcement was made that arguments in the case of Swift and Company *et al.* vs. the United States (the Meat Packers case) would be heard January 3, 1928.

On October 31 the court will take its first recess of the term for a period of three weeks for the purpose of writing opinions.

Teapot Dome Oil Lease Declared Void

The Case—No. 140. Mammoth Oil Company, Sinclair Crude Oil Purchasing Company, and Sinclair Pipe Line Company, petitioners, vs. United States of America. On writ of certiorari to the United States Court of Appeals for the Eighth Circuit.

The Decision.—The Court, without dissent, affirmed the decree of the Circuit Court to the effect that the Teapot Dome lease made by Albert B. Fall, when Secretary of the Interior, to the Sinclair Oil Companies was made by fraud and in violation of acts of Congress, and that the lease lands should be restored to the Government.

Mr. Justice Stone and Mr. Justice Van Devanter took no part in the consideration or decision of this case.

The Opinion.—Mr. Justice Butler delivered the opinion of the Court, from which extracts are quoted below:

"This suit was brought by the United States against the petitioners in the District Court of Wyoming to secure the cancellation of an oil and gas lease made by the United States to the Mammoth Oil Company April 7, 1922, and to set aside a supplemental agreement made by the same parties February 9, 1923. An accounting and possession of the leased lands and general relief were also demanded.

"The complaint alleged that the lease and agreement were made without authority of law and in consummation of a conspiracy to defraud the United States. The District Court held that there was no fraud, and dismissed the case (5 Fed.-2D—330). The Circuit Court of Appeals held that the lease and agreement were obtained by fraud and corruption, reversed the decree and directed the District Court to enter one cancelling the lease and agreement as fraudulent, enjoining petitioners from further trespassing on the leased lands and providing for an accounting by the Mammoth Oil Company for all oil and other petroleum products taken under the lease and contract (14 Fed.-2D—705).

"The lease covered 9321 acres in Natrona County, Wyoming, commonly known as Teapot Dome, being Naval Reserve No. 3 created April 30, 1915, by an executive order of the President, made pursuant to the Act of June 25, 1910 (c 421, 36 Stat. 847) as amended August 24, 1912 (c 369, 37 Stat. 497).

"March 5, 1921, Edwin Denby became Secretary of the Navy and Albert B. Fall Secretary of the Interior. May 31, 1921, the President made an order purporting to commit the administration of oil and gas bearing lands in the naval reserves to the Secretary of the Interior, subject to the supervision of the President.

"The lease granted to the company the exclusive right to take and dispose of oil and gas as long as produced in paying quantities. The leases agreed to drill test wells and, fully to develop the reserve, to construct, or cause its nominee to construct a common carrier pipe-line (about 1000 miles in length) from the leased lands; to purchase all royalty oil when and as produced and in payment to set up an oil exchange credit to the lessor and issue certificates showing the amount and value of royalty oil received by lessee.

"And it was agreed that the lessee, when requested by the lessor, would construct steel tanks necessary for storage; that lessor would pay in oil certificates of face value equal to such cost; that in exchange for crude oil lessee would deliver fuel oil and other petroleum products for the Navy.

"By a separate agreement dated December 20, 1922, the lessee designated, and the lessor accepted, the Sinclair Pipe Line Company as the nominee of lessee to construct the pipe line, having a daily capacity of 40,000 barrels.

"The supplemental agreement of February 9, 1923, relates to storage tanks to be provided by the lessee.

"A construction of the Act of June 4, 1920, authorizing the agreed disposition of the reserve would conflict with the policy of the Government to maintain in the ground a great reserve of oil for the Navy. It would restore to the Secretary of the Navy authority, of which he had recently been deprived, to construct fuel depots without express authority of Congress. It would put facilities of the kind specified outside of the operation of the general rule prohibiting the making of contracts of purchase or for construction work in the absence of express authority and adequate appropriations therefor.

"It would be inconsistent with the principle upon which rests the law requiring purchase money received on the sale of Government property to be paid into the Treasury.

"The complaint states that the lease and agreement were made as the result of a conspiracy by Fall and H. F. Sinclair to defraud the United States; that Fall acted for the United States and Sinclair acted for the Mammoth Oil Company; that the negotiations were secret and the lease was made without competition; that responsible persons and corporations desiring to obtain leases were by Fall, in collusion with Sinclair, denied opportunity to become competitors of the

Mammoth company; that before and after the making of the lease Fall kept the negotiations and execution secret from his associates, the Congress and the public, and, in general terms, the complaint charges that Fall and Sinclair conspired to defraud the Government by making the lease without authority and in violation of law and to favor and prefer the Mammoth company over others.

"The complaint did not allege bribery, and in the view we take of the case there is no occasion to consider and we do not determine whether Fall was bribed in respect of the lease or agreement. It was not necessary for the Government to show that it suffered or was liable to suffer loss or disadvantage as a result of the lease or that Fall gained by or was financially concerned in the transaction.

"It requires no discussion to make it plain that the facts and circumstances require a finding that pending the making of the lease and agreement that it was not possible for him the Government's policy for the conservation of oil reserves for the Navy and in disregard of law, conspired to procure for the Mammoth company all the products of the reserve on the basis of exchange of royalty oil for construction work, fuel oil, etc.; that Fall so favored Sinclair and the making of the lease and agreement that it was not possible for him loyally or faithfully to serve the interests of the United States or impartially to consider the applications of others for leases in the reserve, and that the lease and agreement were made fraudulently by means of collusion and conspiracy between them.

"In January, 1923, the petitioner, Sinclair Crude Oil Purchasing Company, bought from that company the tanks already constructed and others being built thereon. It used them to store Salt Creek Royalty oil that it bought from the Government.

"It contends that the Circuit Court of Appeals erred in directing it be restrained from further trespassing upon the reserve, and that in any event it should be given opportunity to remove its property. But the purchasing company is presumed to have known that no law authorized the making of any such lease.

"The Sinclair Pipe Line Company, as lessee's nominee to build the pipe line provided for in the lease, expended a large amount in constructing on the reserve a pumping station, pipe line and other equipment necessary for the transportation of the oil therefrom. It asserts that it relied on the validity of the lease, had no knowledge of any fraud in its procurement and made these expenditures in good faith.

"It contends that it should have opportunity to procure from governmental authorities a right to use the reserve lands for the operation of the pipe line and equipment thereon; and, failing to get a right of way or easement for that purpose, it should be allowed to remove its property.

"That Company was also owned half and half by the Consolidated Company and the Standard Company. It was a mere nominee to do some of the work specified in the lease to be performed by the lessee.

"The existence of that arrangement for the exhaustion of the reserve was calculated to excite the apprehensions of one considering such a purchase and put him on his guard rather than to give assurance of safety. The use of such tanks to take oil from the reserve was a part of the illegal scheme.

"It is chargeable with notice that the use of reserve oil to procure the construction of the pipe line was a part of the plan for the unauthorized exhaustion of the reserve; that such use furthered the violation of law and was contrary to the established conservation policy.

"The tanks, pipe line and other improvements put on the reserve for the purpose of taking away its products were not authorized by Congress. The lease and supplemental agreement were fraudulently made to circumvent the law and to defeat public policy. No equity arises in favor of the lessee or the other petitioners to prevent or condition the granting of the relief directed by the Circuit Court of Appeals.

"Petitioners are bound to restore title and possesion of the reserve to the United States, and must abide the judgment of Congress as to the use or removal of the improvements or other relief claimed by them. Decree affirmed."—*Extracts.*

Did Reed Committee Expire With 69th Congress?—continued from p. 315

Pro—continued

HON. DAVID A. REED—continued from p. 315

mittee continue attacks upon Republican Senators.

The strenuous but unsuccessful efforts made by the Democratic Senators to pass the resolution continuing special committees and their willingness to sacrifice the appropriations and the public buildings bills in the contest [during the closing days of the 69th Congress] testify eloquently to their real thought. They knew that the committee would expire if it was not affirmatively continued. It is useless now to argue that the Senate has power to continue its committees; the power is unquestioned, but it was not exercised.

If, as seems clear, the committee is dead, then there are no vacancies to be filled by the Vice-President. But, even if the committees were still in existence, the Senate has not given authority to the Vice-President to do more than designate the original five members of the committee.

Under the rules of the Senate, any vacancies must be filled by election by the Senate itself. When the Senate is not in session, the presiding officer has no authority whatever.—*Extracts, see 12, p. 322.*

Con—continued

HON. WILLIAM E. BORAH—continued from p. 315

it is to the effect that this being a continuing body, unless the resolution of itself limits the time and authority to end with the Congress, the committee continues until it makes its final report and is discharged.

If the Senate is a continuing body—and the Supreme Court so holds—this committee is in existence after final adjournment, in my judgment, as before. What is there about adjournment that ends the life of the committee, since it is the committee of a continuing body?

I feel that the committee has the power to go ahead and complete its work and that no power can be interposed to prevent that except an affirmative resolution here ending the power of the committee.

It is my opinion the committee has authority to proceed during the recess of the Senate, to take testimony of witnesses, and to impound the ballot boxes and election records, and to generally carry out instructions of Resolutions 195 and 324.—*Extracts, see 6 and 14, p. 322.*

Recent Government Publications of General Interest

The following publications issued by various departments of the Federal Government may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D. C., at the prices listed below.

Agriculture

"Prices of Farm Products Received by Producers, 3, South Atlantic and South Central States." Price, 35 cents. Tables for Delaware, Maryland, Virginia, West Virginia, etc.

"Statistics of Cattle, Calves, Beef, Veal, Hides and Skins, Year Ended December 31, 1925." Price, 40 cents. Cattle and calves, beef, veal and beef products, livestock and meat summary table, and hides and skins.

"Irrigated Crop Rotations in Western Nebraska," by Carl S. Scofield and Jas. A. Holden. Price, 5 cents. Plan of the rotations, list of the rotations, cultural methods and crop varieties, basic yield data, annual fluctuations in yield, etc.

"Heat-Damaged Wheat," by D. A. Coleman. Price, 10 cents. Causes of heat damage to wheat, purpose of investigation, sources of material studied, methods of analysis used, etc.

"Soil Survey of Burt County, Nebraska," by Louis A. Wolfanger and others. Price, 20 cents. Description of area, climate, agriculture, soils, with summary and map.

"Work of the Umatilla Field Station in 1923, 1924 and 1925," by H. K Dean. Price, 5 cents. Conditions on the project, climatic conditions, livestock industries, alfalfa production, etc.

"Grouping of Soils on the Basis of Mechanical Analysis," by R. O. E. Davis and H. H. Bennett. Price, 5 cents. Designation of soil classes, the Whitney diagram, principal soil classes, etc.

"Timber Growing and Logging Practice in the Douglas Fir Region," by T. T. Munger and W. B. Greeley. Price, 15 cents. General situation in the Douglas fir region, minimum measures to keep forest land productive, returns and costs of minimum measures, etc.

"Factors Influencing Severity of Crazy-Top Disorder of Cotton," by C. J. King and H. F. Loomis. Price, 15 cents. History and distribution, relation of stress conditions, persistence of the disease in certain soil areas, spot occurrence, etc.

"Timber Growing and Logging Practice in the Central Hardwood Region," by C. R. Tillotson. Price, 15 cents. The region and its possibilities, measures necessary to keep forest land productive, etc.

"Some Effects of Freezing on Onions," by R. C. Wright. Price, 5 cents. Freezing points as influenced by storage conditions, undercooling and freezing experiments, freezing injury, etc.

"Relation of Highway Slash to Infestations by the Western Pine Beetle in Standing Timber," by J. E. Patterson. Price, 5 cents. The area, the slash, line of investigation, etc.

Commerce

"Factors in Wheat Marketing," by Theodore D. Hammatt. Price, 5 cents. Thirteen charts on wheat.

"Parana Pine Lumber Industry of Brazil," by Jos. C. Kircher. Price, 10 cents. Brazilian timber resources, the Parana pine forests, growth of tree and character of wood, etc.

"Used-Car Markets of Foreign Countries," compiled by J. H. Shannon. Price, 10 cents. Markets of North America, Canada, Mexico, Porto Rico, Cuba, South America, etc.

"Budgets of Far-Eastern Countries," by Jos. Gregory Mayton. Price, 15 cents. General observations, budgets of individual countries and sources consulted.

"End-Matched Softwood Lumber and Its Uses." Price, 5 cents. End matching a welding process, end matching of hardwoods already practiced, strength factor of end-matched joints, the many uses for end-matched lumber, etc.

"The British Market for Hosiery," by K. A. H. Egerton and Wilson Flake. Price, 10 cents. Extent of market for imported hosiery, imports of certain classes, change in trade since duties became effective, sources of cotton hosiery imports, etc.

"Electrical Development and Guide to Marketing of Electrical Equipment in Brazil." Price, 10 cents. Geographical, surface features and climate, cities, transportation and communication, population and language, money, weights and measures, etc.

"Latin American Budgets, Part 1, Argentina, Uruguay, Paraguay and Brazil," by Jas. C. Corliss. Price, 10 cents. Argentina, national finances, provincial finances, municipal finances. Uruguay, national finances, municipality of Montevideo, etc.

"The British Market for Hand Tools," by Harold A. Burch. Price, 10 cents. Size of British market, internal industrial conditions, position of American tools, etc.

"Markets for Prepared Medicines," by M. C. Bergin. Price, 10 cents. Analysis of growth, analysis of exports by continents, major markets of the United States, etc.

"The Anglo-Egyptian Sudan, a Commercial Handbook," by North Winship. Price, 15 cents. History, area and boundaries, topography and rivers, climate by provinces, population and language, etc.

Education

"Physical Education in American Colleges and Universities," by Marie M. Ready. Price, 10 cents. Requirements relative to physical condition of students at entrance, required work in physical education, military training, hygiene, athletics, etc.

Fisheries

"Preparation of Fish for Canning as Sardines," by Harry R. Beard. Price, 30 cents. Experimental part, partially drying the fish, new process for preparing the fish, etc.

"Investigations Concerning the Red-Salmon Runs to the Kariuk River, Alaska," by Chas. H. Gilbert and Willis H. Rich. Price. 25 cents. Kariuk River watershed, statistical history of the fishery, observation on the spawning grounds, analyses of recent runs, etc.

Geology

"Geology and Ore Deposits of the Mogollon Mining District, New Mexico," by Henry G. Ferguson. Price, 65 cents. Outline of the report, bibliography, topography, climate and vegetation, geology, etc.

"Results of Magnetic Observations Made by United States Coast and Geodetic Survey in 1926," by Daniel L. Hazard. Price, 5 cents. Distribution of stations, secular change of magnetic declination, instrumental corrections, diurnal variation correction, etc.

Labor

"Wages and Hours of Labor in the Motor Vehicle Industry, 1925." Price, 20 cents. Scope and method, general tables, appendix and charts.

"Handbook of Labor Statistics, 1924-1926." Price, $1. Apprenticeship, arbitration and conciliation, child labor, convict labor, co-operation, cost of living, employment statistics, etc.

Laws

"Public Laws of the United States of America Passed at the Sixty-ninth Congress 1925-1927." Price, $4.

Mines

"The Ferric Sulphate-Sulphuric Acid Process," compiled by Oliver C. Ralston. Price, 30 cents. Covers importance of the problem, discovery of the process, the process, previous work, apparatus used during research, analytical methods, results of experiments, etc.

"Drilling and Blasting in Open-Cut Copper Mines," by E. D. Gardner. Price, 30 cents. General description of mines, rock, mining methods, coyote blasting, drilling methods, etc.

"Quarry Accidents in the United States During the Calendar Year, 1925," by Wm. W. Adams. Price, 20 cents. Classification of Injuries, quarries classified, accidents by principal causes, etc.

Sanitation

"Experimental Bacterial and Chemical Pollution of Wells, via Ground Water and the Factors Involved," by C. W. Stiles and others. Price, 30 cents. General discussion and summary of results, experimental spread of pollution in ground water in sand at Fort Caswell, N. C., etc.

Standards

"Absorption Spectra of Iron, Cobalt and Nickel," by W. F. Meggers and F. M. Walters, Jr. Price, 10 cents. Underwater spark spectra, apparatus and experimental details, discussion and bibliography.

"Testing of Line Standards of Length." Price 10 cents. Fundamental standards, secondary standards, multiples and submultiples of the meter, customary units and standards of length, etc.

"Caroa Fiber as a Paper-Making Material," by Merle B. Shaw and Geo. W. Bicking. Price, 25 cents. Occurrence and

characteristics of carob, laboratory, paper-making, semi-commercial paper-making tests, fiber characteristics and conclusions.

"Aging of Soft Rubber Goods," by R. F. Tener and others. Price, 15 cents. Previous investigations, accelerated aging tests, rubber compounds used, test conditions, etc.

"Study of the Windows in Window Envelopes for the Purpose of Developing Standard Specifications," by R. E. Lofton. Price, 5 cents. Types of window envelopes, test methods, test data, quality specifications recommended for windows of window envelopes, etc.

"Further Radiometric Measurements and Temperature Estimates of the Planet Mars, 1926," by W. W. Coblentz and C. O. Lampland. Price, 15 cents. Covers instrumental equipment and methods of observations, radiometric measurements of selected regions on Mars, temperature estimates, etc.

"Comparison of American, British and German Standards for Metal Fits," by Irvin H. Fullmer. Price, 10 cents. Description of systems, basis of comparison, corresponding fits in the American, British and German systems, and bibliography.

Social Service

"What Child Dependency Means in the District of Columbia and How It Can Be Prevented," by Emma O. Lundberg and Mary E. Milburn. Price, 5 cents. Dependency problem the prevention of child dependency, the relation between public and private agencies, etc.

Tobacco

"Stocks of Leaf Tobacco and American Production, Imports, Exports and Consumption of Tobacco and Tobacco Products, 1926." Price, 10 cents. A comparative data of tobacco stocks, supply and distribution of tobacco in United State, production of tobacco, prices of tobacco, etc.

Treasury

"Digest of Decisions Relating to National Banks, 1864-1926, vol. 2, 1913-1926." Price, $1. Accommodation paper, agent of shareholders, capital stock, checks, clearing house, collateral securities, etc.

Water Supply

"Surface Water Supply of United States, 1923, pt. 12, North Pacific Slope Drainage Basins. Price, 35 cents. Authorization and scope of work, definition of terms, explanation of data, accuracy of field data and computed results, co-operation, division of work, etc.

Cases of Invalid Credentials Presented in the Senate

Continued from page 298

Phillip F. Thomas, Maryland, 1867. The candidate was in sympathy with the Confederacy.

Reynolds vs. Hamilton, Texas, 1870. Illegality in reconstruction legislature.

Norwood vs. Blodgett, Georgia, 1871-72. The legislature was not that chosen next preceding the expiration of the term for which the Senator was elected to represent the State.

Ray vs. McMillan, Louisiana, 1873. No legally constituted State organization in Louisiana at that time. (Also, McMillan vs. Pinchback; Spafford vs. Kellog.)

Corbin vs. Butler, South Carolina, 1877-79. Rival legislatures.

Lucas vs. Faulkner, West Virginia, 1887. Validity of election by legislature convened for special session in contest with Governor's appointment.

Clark and Maginnis vs. Saunders and Power, Montana, 1890. Contested election, because of power of the legislature.

Davidson vs. Call, Florida, 1892. Legislatures electing Call not properly constituted.

Lee Mantle, Montana, 1893. The Governor had no power to fill vacancies existing at commencement of term.

John B. Allan, Washington, 1893. A Governor may not appoint for original term.

Addicks vs. Kenney, Delaware, 1897. Credentials not in proper form for Addicks. See page

H. W. Corbett, Oregon, 1897. The Governor could not appoint for original term.

Matthew S. Quay, Pennsylvania, 1899. The Governor could not appoint on failure of legislature to elect.

F. P. Glass, Georgia, 1914. The Governor had no power to appoint in absence of State legislation for enforcement of the Seventeenth Amendment.

Sources From Which Material in This Number Is Taken

Articles for which no source is given have been specially prepared for this number of The Congressional Digest

1—Congressional Record, 69th Congress, 1st Session, May 19, 1926.
2—Congressional Record, 69th Congress, 2d Session, January 3, 1927.
3—Congressional Record, 69th Congress, 2d Session, December 22, 1926.
4—Congressional Record, 69th Congress, 2d Session, January 19, 1927.
5—Congressional Record, 69th Congress, 2d Session, January 20, 1927.
6—Congressional Record, 69th Congress, 2d Session, March 3, 1927.
7—Congressional Record, 69th Congress, 2d Session, March 4, 1927.
8—"The Vanishing Rights of the States," by James M. Beck, George H. Doran Co., New York, 1926.
9—"Addresses on Government and Citizenship," by Elihu Root, Harvard University Press, 1916.
10—"Return to Secret Party Funds," by Perry Belmont, Putnam, New York, 1927.
11—The Evening Star, Washington, April 8, 1927.
12—The Evening Star, April 10, 1927.
13—The Evening Star, April 13, 1927.
14—Transcript of Record of the case of James A. Reed et. al. vs. County Commissioners of Delaware County, Pennsylvania, in the United States Circuit Court of Appeals for the Third circuit.
15—"Senate Election Cases, 1789-1913;" the Legislative Reference Service of the Library of Congress; and speech of Senator Charles S. Deneen, January 19, 1927.
16—The Washington Post, October 12, 1927.
17—Pamphlet, "The Facts About the Nomination of William S. Vare," by Harry A. Mackey, 1926.
18—Rules and Manual of the United States Senate.
19—The Congressional Digest, October, 1926.
20—Partial Reports of the Special Committee Investigating Expenditures in Senatorial Primary and General Elections, pursuant to Senate Resolution 195, 1926-1927.
21—"Laws Relating to Campaign Contributions," compiled for use of the Secretary of the Senate, 1920.

The Congressional Digest

The Citizen's Guide To National Issues

Back Numbers of Current Importance Still Available

Numbers starred are exhausted except in bound volumes.
The subjects listed represent the pro and con feature of the number.

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